No. 83-236

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

PORTLOCK COMMUNITY ASSOCIATION (MAUNALUA BEACH); KOKOHEAD COMMUNITY LEASE-FEE, INC.; WEST MARINA COMMUNITY ASSOCIATION; HAHAIONE VALLEY COMMUNITY ASSOCIATION,
Appellants,

vs.

FRANK E. MIDKIFF, RICHARD LYMAN, JR., HUNG WO CHING, MATSUO TAKABUKI and MYRON B. THOMPSON, Trustees of the Kamehameha Schools/Bishop Estate,
Appellees.

APPELLANTS' BRIEF ON THE MERITS

PAUL, JOHNSON & ALSTON
A Law Corporation
Honolulu, Hawaii

ARCHER ROSENAK & HANSON
San Francisco, California
Of Counsel

RICHARD J. ARCHER*
COREY Y. S. PARK
Suite 1300
Pacific Trade Center
Honolulu, HI 96813
(808) 524-1212
**Counsel of Record*

BOWNE OF SAN FRANCISCO, INC. • 150 NINTH ST. • S.F., CA 94103 • (415) 864-2500

QUESTIONS PRESENTED

1. Whether Hawaii's Land Reform Act, providing for the condemnation of lessor's leased fee interests in land held in concentrated ownership under long term leases, is unconstitutional under the Fifth and Fourteenth Amendments to the United States Constitution.

2. Whether the court below erred in failing to give the findings of the Hawaii Legislature the appropriate weight and deference due from a federal court.

3. Whether the court of appeals should have abstained from deciding the constitutional question pending resolution of contemporaneous proceedings in Hawaii courts.*

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*The state defendants below were the Hawaii Housing Authority ("HHA"), the Commissioners of the HHA (Paul A. Tom, Tony Taniguchi, Wilbert K. Euguchi, Wayne T. Takahashi, Lawrence N.C. Ing, Nobuyoshi Tamura, Andrew I.T. Chang, and David C. Slipher), and the Executive Director of the HHA (Franklin Y.K. Sunn). At the time of the filing of the State's Jurisdictional Statement, Commissioners Tom, Tamura, and Chang had been succeeded by Commissioners George Costa, William A. Knutson, and John Spierling, and Mr. Tom succeeded Mr. Sunn as Executive Director. The HHA, its Commissioners, and its Executive Director are appellants before this Court.

Intervenors-defendants given leave to intervene by the district court below, and appellants before this Court, are the following lessee associations: Wai-Kahala Tract "H" Association, Inc.; Halawa Hills Landsale Committee; Awakea Association; Alii Shores Com-

munity Association; Enchanted Hills, Unit 1; Portlock Community Association (Maunalua Beach); Kokohead Community Lease-Fee, Inc.; West Marina Community Association; Kalama Valley Community Association; Maunalua Triangle-Koko Kai Community Association, Inc.; Hahahione Valley Community Association, Inc.; Kamiloiki Community Association; Lunalilo Marine Community Association; Mariners Ridge and Cove Fee/Lease Conversion Committee; Spinnaker Isle Association; Waialae Iki Community Association; Waiau Community Association; Kahala Community Association, Inc.; Kahala Community Fee Purchase Fund; and Halawa Valley Estates Fee Conversion Corporation.

Plaintiffs below, appellees before this Court, were the Trustees of the Bishop Estate ("Bishop Estate" or "Estate"): Frank E. Midkiff, Richard Lyman, Jr., Hung Wo Ching, Matsuo Takabuki, and Myron B. Thompson. Mr. Ching has since been succeeded by William A. Richardson.

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Appellees.

APPELLANTS BRIEF ON THE MERITS

Appellants Portlock Community Association (Maunalua Beach); Koko Head Community Lease Fee, Inc.; West Marina Community Association; and Hahaione Valley Community Association, Inc. respectfully file this Brief on the Merits to review the decision of the United States Court of Appeals for the Ninth Circuit entered on March 28, 1983. Appellants join in and concur with the arguments submitted by the Appellants in Nos. 83-141 and 83-283, with which this appeal is consolidated, and submit this brief to emphasize the points raised herein.

OPINIONS BELOW

JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

Appellants concur with, and incorporate by reference herein, the statement of the State Appellants contained in their Brief on the Merits, No. 83-141, with respect to the description of the Opinion Below, Jurisdiction, Constitutional and Statutory Provisions Involved and Statement of the Case.

SUMMARY OF THE ARGUMENT

The decision of the Court of Appeals for the Ninth Circuit must be vacated for the following reasons:

1. The lower court failed to recognize that a state may utilize its powers of eminent domain to achieve legitimate social ends within its police power, *Berman v. Parker*, 348 U.S. 26 (1954); and that once a state has determined that a particular exercise of that power is for a public purpose, it is not the place of the federal judiciary to act as a "super legislature" to substitute its judgment for that of a state legislature, *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, at 124 (1978).

2. The lower court erred by ignoring or reappraising, without the benefit of any evidentiary hearing, the findings of the Hawaii Legislature concerning the social, economic and political effects of the peculiar housing market in Hawaii; and

3. The lower court should have required that the federal judiciary abstain from interpreting an important state statute directly involving concerns peculiar to the state where state court proceedings were pending.

ARGUMENT

I. The Decision of the Court of Appeals Ignores Settled Principles That a State May Exercise Its Power of Eminent Domain in Aid of Its Police Power and That Once a State Has Chosen to Do So a Federal Court May Not, Except Under the Most Extreme Circumstance, Interfere with That Exercise

The court below erred in failing to recognize that the state's power of eminent domain can validly be exercised in aid of the police power; that if a particular result can be achieved under the police power, it makes no difference that the power of eminent domain is used to achieve that result. In *Berman v. Parker*, 348 U.S. 26 (1954), this Court upheld the constitutionality of the District of Columbia Redevelopment Act of 1945 against a challenge that there was an unconstitutional taking because the plaintiffs' property would be taken and redeveloped for private, not public, use. The court noted that the power of Congress over the District of Columbia was the same as the legislative powers of a state. *Berman*, 348 U.S. at 31-32. Writing for a unanimous court, Justice Douglas stated:

> We deal, in other words, with what traditionally has been known as the police power. An attempt to define its reach or trace its outer limits is fruitless, for each case must turn on its own facts. The definition is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete

> definition. Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia, see *Block v. Hirsh*, 256 U.S. 135, 41 S.Ct. 458, 65 L.Ed. 865, or the States legislating concerning local affairs. See *Olsen v. State of Nebraska*, 313 U.S. 236, 61 S.Ct. 862, 85 L.Ed. 1305; *Lincoln Federal Labor Union No. 19129, A. F. of L. v. Northwestern Co.*, 335 U.S. 525, 69 S.Ct. 251, 93 L.Ed. 212; *California State Ass'n Inter-Ins. Bureau v. Maloney*, 341 U.S. 105, 71 S.Ct. 601, 95 L.Ed. 788. This principle admits of no exception merely because the power of eminent domain is involved. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one. See *Old Dominion Land Co. v. United States*, 269 U.S. 55, 66, 46 S.Ct. 39, 40, 70 L.Ed. 162; *United States ex rel. Tennessee Valley Authority v. Welch*, 327 U.S. 546, 552, 66 S.Ct. 715, 718, 90 L.Ed. 843.

348 U.S. at 32. The Court further stated:

> Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end. See *Luxton v. North River Bridge Co.*, 153 U.S. 525, 529-530, 14 S.Ct. 891, 892, 38 L.Ed. 808; *United States v. Gettysburg Electric R. Co.*, 160 U.S. 668, 679, 16 S.Ct. 427, 429, 40 L.Ed. 576. Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area.

> Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established.

348 U.S. at 33.

The court below erred in not following the holding in *Berman*. It expressly limited the power of eminent domain to five situations, none of which included the exercise of the police power. 702 F.2d at 793-96; Appendix A, to the Appendix to the Jurisdictional Statement of the State Appellants [hereinafter cited as J.S. App.], No. 83-141, A11-A16.[1] Then it held that *Berman* "does not paint with so broad a brush" as to permit a legislature to implement its police powers by the exercise of the power of eminent domain. 702 F.2d at 796; Appendix A, J.S. App. No. 83-141, A17. It is impossible to reconcile the holding of the court below with the holding and language in *Berman*.[2]

Prior decisions of this Court make clear that in the exercise of its police power the Hawaii Legislature could have remedied the concentration of fee simple ownership of resi-

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[1]For convenience, reference to matters previously printed shall, where possible, be made to the Appendix of the Jurisdictional statement of the State Appellants, No. 83-141.

[2]Substantially all the commentators agree that *Berman* holds as described: B. Ackerman, *Private Property and the Constitution*, 190, 190 n.5 (1977); J. Gelin & D. Miller, *The Federal Law of Eminent Domain*, 15-16 (1st ed. 1982); I. Levey, *Condemnation in U.S.A.*, 214, 214 n.51 (1st ed. 1969); 1 J. Sackman & P. Rohan, *Nichols' The Law of Eminent Domain*, § 3.11[1] n.21 (rev. 3d ed. 1981); W. Stoebuck, *Nontrespassory Takings in Eminent Domain*, 14-15, 15 n.48 31, 31 n.35 (1st ed. 1977); Blumstein, *A Prolegomenon to Growth Management and Exclusionary Zoning Issues*, 43 Law & Contemp. Probs., Spring 1979, at 5, 50; Costonis, *"Fair" Compensa-*

dential lands in Hawaii by requiring complete divestiture of such interests.

In *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117 (1978), this Court upheld the exercise of the power of divestiture on behalf of a state. In *Exxon*, a Maryland statute provided among other things that producers and refiners would no longer be permitted to operate retail service stations within the state and that their ownership in such stations would, in effect, have to be divested. A Maryland trial court held that the statute violated the due process clause of the Constitution of the United States. The Court of Appeals for Maryland held the statute valid under both the due process clause and the commerce clause of the Constitution. On appeal to this Court the judgment of the Court of Appeals of Maryland was affirmed on both grounds. Of the eight participating justices, Justice Blackmun dissented on the sole ground that the Maryland statute was an impermissible discrimination against interstate commerce. Before the Supreme Court, only one of the seven oil companies (and its subsidiary) even contested the due process ruling. Justice Stephens, speaking for the court, stated:

> Appellants' substantive due process argument requires little discussion. [footnote omitted] The evi-

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tion and the Accommodation Power: Antidotes for the Taking Impasse in Land Use Controversies, 75 Colum. L. Rev. 1021, 1036-37 (1975); Lashly, *The Case of Berman v. Parker: Public Housing and Urban Redevelopment*, 41 A.B.A. J. 501-03 (1955); Morris, *The Quiet Legal Revolution: Eminent Domain and Urban Redevelopment*, 52 A.B.A. J. 355-59 (1966); Note, *Aesthetics as a Justification for the Exercise of the Police Power or Eminent Domain*, 23 Geo. Wash. L. Rev. 730, 730-31, 734 (1955); Note, *Police Power—Slum Clearance Projects*, 40 Iowa L. Rev. 659-63 (1955); Note, *Constitutional Law—Public Use Requirement and the Power of Eminent Domain*, 53 Mich. L. Rev. 883-85 (1955); Annot., 44 A.L.R. 2d 1414, 1422, 1433 (1955).

dence presented by the refiners may cast some doubt on the wisdom of the statute, but it is, by now, absolutely clear that the Due Process Clause does not empower the judiciary "to sit as a 'superlegislature to weigh the wisdom of legislation'. . . ." *Ferguson v. Skrupa*, 372 U.S. 726, 731, 83 S.Ct. 1028, 1032, 10 L.Ed. 2d 93 (citation omitted). Responding to evidence that producers and refiners were favoring company-operated stations in the allocation of gasoline and that this would eventually decrease the competitiveness of the retail market, the State enacted a law prohibiting producers and refiners from operating their own stations. Appellants argue that this response is irrational and that it will frustrate rather than further the State's desired goal of enhancing competition. But, as the Court of Appeals observed, this argument rests simply on an evaluation of the economic wisdom of the statute, 279 Md., at 428, 370 A.2d, at 1112, and cannot override the State's authority "to legislate against what are found to be injurious practices in their internal commercial and business affairs. . . ." *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, 335 U.S. 525, 536, 69 S.Ct. 251, 257, 93 L.Ed. 212. [footnote omitted] Regardless of the ultimate economic efficacy of the statute, we have no hesitancy in concluding that it bears a reasonable relation to the State's legitimate purpose in controlling the gasoline retail market, and we therefore reject appellants' due process claim.

437 U.S. at 124-25.

The opinion further stated:

It is worth noting that divestiture is by no means a novel method of economic regulation, and is found in both federal and state statutes. To date, the courts have had little difficulty sustaining such statutes against a substantive due process attack. See, *e.g.*,

Paramount Pictures, Inc. v. Langer, 23 F.Supp. 890 (ND 1938), dismissed as moot, 306 U.S. 619, 59 S.Ct. 641, 83 L.Ed. 1025; see generally Comment, Gasoline Marketing Practices and "Meeting Competition" under the Robinson-Patman Act, 37 Md. L.Rev. 323, 329 n.44 (1977).

437 U.S. at 124, n.13.

This Court's holding in *Exxon* reiterated a similar holding with respect to Congress' exercise of the commerce power. In *North American Co. v. Securities and Exchange Com'n*, 327 U.S. 686 (1946), this Court held that in the exercise of the commerce power, Congress could order a public utility holding company to divest itself of its subsidiaries even though its holdings had been acquired prior to the passage of the Public Utility Holding Company Act.

Thus, the Hawaii Legislature had the power to deal with the evils of economic concentration of landownership in a way which would eliminate the evil.[3] Condemnation of the interests and distribution to the tenants as provided by the Legislature would atomize the concentration. In fact, it is the only conceivable way to increase the market for fee simple homes. Neither the opinion of the court below nor the concurring opinion recognizes the evils of concentration, nor does either propose another solution. To affirm the decision of the court of appeals is to hold that Hawaii cannot deal with the problem of economic concentration and that a federal court on the basis of its own knowledge can invalidate state legislation.

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[3]The evils found by the Hawaii Legislature are enumerated in Hawaii Rev. Stat. § 516; J.S. App., No. 83-141, at A136-A140.

In addition, extensive Findings of Fact and Conclusions of Law validating the findings of the Hawaii Legislature were recently entered in a state court proceeding under the Land Reform Act. Pursuant to the Hawaii Supreme Court's refusal to determine the

II. The Court Below Erred in Failing to Defer to the Findings of the Hawaii Legislature

The court below erred in ignoring, in the case of Judge Alarcon's opinion,[4] and reappraising, in the case of Judge Poole's concurring opinion, discussed below, the extensive legislative findings made by the Hawaii state legislature in enacting the Land Reform Act. These findings included determinations that lessors, in renegotiating the initially generally affordable lease rents, adopted a practice of increasing land rentals in a manner unrelated to the value of the raw land; that these renegotiations brought about staggering increases in annual lease rents, which directly resulted in inflated land values; and that the effect of the leasehold system was found to have grave effects on the health, welfare and well being of elderly persons and to aggravate the already acute need for government sponsored low and middle income and elderly housing. J.S. App., No. 83-141, A136-A140.

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constitutionality of the Land Reform Act on motions for summary judgment in two related cases, *Hawaii Housing Authority v. Castle*, 65 Hawaii 465, 653 P.2d 781 (1982), J.S. App., No. 82-236, at A166; and *Hawaii Housing Authority v. Brown*, Civ. No. 8489 (Hawaii S. Ct., 1982), J.S. App., No. 83-236, at A163; an extensive evidentiary hearing involving the Appellees was recently held (Civ. No. 63408 [First Circuit Court, Hawaii]). As a result of a lengthy trial, the state court entered Findings of Fact and Conclusions of Law validating the legislative findings and upholding the act. A copy of the Findings of Fact is attached hereto as Exhibit 1. (See Rule 201, Federal Rules of Evidence.)

[4]Judge Alarcon's opinion ignores the extensive legislative findings that form the basis of the Land Reform Act by dismissing them as mere "statutory rationalizations. . . ." 702 F.2d at 798; J.S. App., No. 83-141, A21.

In choosing to ignore or reappraise on its own these extensive state legislative findings, the court below failed to accord the findings the deference required by previous decisions of this Court.

a. The Court Below Erred in Failing to Give the State Legislative Findings the Weight and Deference Due From a Federal Court

The opinion of the court below justified its ignoring of the Hawaii legislative findings by holding that such findings are not entitled to the same weight as those of Congress.[5] 702 F.2d 798; J.S. App., No. 83-141, A19. This was clearly error.

The lower court's justification contradicts this Court's decision in *Berman v. Parker*, 348 U.S. 26 (1954); there it was held that federal courts must defer to legislatively determined exercises of police power, which includes the exercise of the eminent domain power. In *Berman*, this Court analogized Congress' exercise of the eminent domain power to that by a state and held that, "Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive." 348 U.S. at 32.

Each of the cases relied upon by the court below to justify ignoring the state legislative findings was decided prior to the *Berman* decision. Since *Berman* now makes clear that the doctrinal foundation for the exercise of eminent domain is the state's police power, the standard

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[5]Whatever the proper weight to be given to the state legislative findings, it is clear here that Judge Alarcon's opinion gave those findings absolutely no weight whatsoever, but merely dismissed them as "statutory rationalizations."

of review of the earlier cases relied upon by the lower court is no longer authority. The proper standard is that noted in the *Berman* decision and reiterated in *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 124 (1978): "[I]t is, by now, absolutely clear that the Due Process Clause does not empower the judiciary 'to sit as a "super-legislature to weight the wisdom of legislation" . . .' "

Thus, the lower court's failure to accord the proper deference to the state legislative findings was error.

b. The Court Below Erred in Relying on "Evidence" and in Reappraising the Findings of the Hawaii State Legislature

The pivotal concurring opinion below relied upon certain "evidence of record", 702 F.2d at 805; J.S. App., No. 83-141, A35, and looked to findings of fact in a related case in reappraising the findings of the Hawaii state legislature, 702 F.2d at 806; J.S. App., No. 83-141, A36.

First, the concurring opinion notes that, "In determining public use, the court may consider extrinsic facts and examine the statue as a whole to 'discover the dominant purpose of the taking.' " 702 F.2d at 805 (citation omitted); J.S. App., No. 80-141, A35. However, no evidentiary hearing on the public use issue was ever held since the District Court expressly declined to rely upon any evidence or facts.* 483 F. Supp. 62, 65; J.S. App., No. 83-141, A66-A67.

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*The trial court did note that Hawaii "has an uncommon system of landholding", and that there is a "concentration of land in a few large landholders." 483 F. Supp. 62, 67, 68; J.S. App., No. 83-141, A70-A71. However, the trial court made this observation based solely on evidence introduced at a hearing on Plaintiffs' motion for a preliminary injunction, which was not consolidated with a hearing on the merits.

Thus, assuming that the legislative findings, by themselves, were not sufficient to support a finding of public purpose, a hearing to consider the "extrinsic facts" should have been held.

The concurring opinion's error is made clear by this court's decision in *Clark v. Nash*, 198 U.S. 361 (1905). In that case, on error to the Utah Supreme Court, this Court recognized that a taking from one person to give to another might be invalid in most states but that special circumstances peculiar to a state might nevertheless justify the exercise of the condemnation power. This Court noted:

> This court has stated that what is a public use may frequently and largely depend upon the facts surrounding the subject, and we have said that the people of a state, as also its courts, must, in the nature of things, be more familiar with such facts, and with the necessity and occasion for the irrigation of the lands, than can any one be who is a stranger to the soil of the state, and that such knowledge and familiarity must have their due weight with the state courts. *Fallbrook Irrig. District v. Bradley*, 164 U.S. 112, 159, 41 L.ed. 369, 388, 17 Sup. Ct. Rep. 56.

198 U.S. at 369.

Since no hearing was held here to determine whether circumstances peculiar to Hawaii may support the Land Reform Act, the court should not have rendered a decision on whether a sufficient public purpose existed.

Second, the concurring opinion referred to certain findings of fact in the related case of *Midkiff v. Amemiya*, Civ. No. 47103 (Hawaii 1st Cir., June 29, 1978), *vacated as moot*, Civ. No. 7294 (Hawaii Supreme Court, April 14, 1982)

J.S. App., No. 83-236, A185-A244, in reappraising the state legislative findings. 702 F.2d at 806; J.S. App., No. 83-141, A36.

Such reappraisal of the state's legislatively determined support for the exercise of police power was improper. As noted above, it is the province of the state legislature to make such determinations and, once made, the federal courts are not "'to sit as a "super legislature to weigh the wisdom of legislation." . . .'"[7] *Exxon Corp. v. Governor of Maryland, supra,* at 124. No evidentiary hearing on the public use issue was held below since the trial court gave the proper deference to the legislative findings. 483 F.Supp. 62, 65; J.S. App., No. 83-141, A66-A67. Thus, no inquiry whatsoever, much less one utilizing the appropriate minimal scrutiny required by this Court, was ever made into these legislative findings. At the very least, some kind of hearing must be held, at which the minimal scrutiny called for by this Court's decision occurs, before the lower court could reappraise the legislative findings.[8]

III. The Federal Courts Should Abstain Pending Review by the Supreme Court of Hawaii

The dissenting opinion in the court below is sufficient to show that generally federal courts should abstain in eminent domain cases such as this. There are "special circumstances" in this case, however, requiring abstention under even the most narrow application of the doctrine of absten-

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[7] *Cf. Old Dominion Land Co. v. United States,* 269 U.S. 55, 66 (1925), holding that even under the pre-*Berman* test, Congress' determination of public use "is entitled to deference until it is shown to involve an impossibility."

[8] Such a hearing was recently held in state court. *See* n. 6, *supra.*

tion. *Kaiser Steel Corp. v. W. S. Ranch Co.*, 391 U.S. 593 (1968) (Brennan, J., concurring).

A holding that the Hawaii Land Refom Act is constitutional on its face and that an evidentiary hearing is unnecessary does not require abstention. But in the instant case the Hawaii Supreme Court on November 10, 1982, in two companion cases set aside two trial court summary judgments upholding the constitutionality (state and federal) of the Act and remanded for trial on the issue of public use. *See* footnote 6, *supra*. It is academic to argue which proceedings were pending and which the Bishop Estate had settled during their progress in the state courts. There were certainly actual administrative and court proceedings extant at all times.* *See Steffel v. Thompson*, 415 U.S. 452, 459 n.10 (1974).

Wise judicial administration, conservation of judicial resources, and avoidance of duplicative litigation would suggest that the federal courts await the results of the hearing in the state court and review by the Hawaii Supreme Court to decide the constitutionality issue. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). This Court has stated that it is "strongly inclined" to follow judgments of state courts to uphold eminent domain statutes and that state legislatures and courts are more familiar with facts relating to public use. *Clark v. Nash*, 198 U.S. 361, 368 (1905).

Abstention is appropriate because of the compelling public interest of the State of Hawaii in this litigation. *Younger v. Harris*, 401 U.S. 37 (1971). The Court of Appeals for

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*After the decision of the Court of Appeals herein, the Bishop Estate sought unsuccessfully to enjoin a pending trial on the constitutionality issue. J.S. App., 83-236, A179.

the Seventh Circuit held it was proper to abstain in a condemnation case even though the condemnee claimed that the ordinance violated the Fifth and Fourteenth Amendments to the United States Constitution. *Ahrensfeld v. Stephens,* 528 F.2d 193 (7th Cir. 1975). That court stated:

> This respect and concern [for state court proceedings] arises clearly in relation to a state's eminent domain system. In *Louisiana Power & Light Company v. City of Thibodaux,* 360 U.S. 25, 79 S.Ct. 1070, 3 L.Ed. 2d 1058 (1959), the Supreme Court noted the "sensitive nature" of federal court intervention in a state's eminent domain system, remarking that eminent domain was "intimately involved with state prerogative." *Id.* at 28-29, 79 S.Ct. 1070. Several federal courts have opined that state eminent domain proceedings should not be interfered with by federal courts because their local nature makes interference unwise.

528 F.2d at 198.

The Court further stated:

> The presence of a federal constitutional claim in the federal court action does not preclude that court's staying its hand because, as this court and others have repeatedly stated in the past, "we must assume that an Illinois court would properly determine the merits of any federal issue properly presented to it." *Cousins v. Wigoda,* 463 F.2d 603, 607 (7th Cir. 1972). See also *Harrison-Halsted Community Group v. Housing and Home Finance Agency, supra,* at 106; *Georgia v. City of Chattanooga, supra,* 264 U.S. at 483-84, 44 S.Ct. 369; *Amalgamated Clothing Workers of America v. Richman Brothers,* 348 U.S. 511, 518, 75 S.Ct. 452, 99 L.Ed. 600 (1955).

528 F.2d at 198.

The court below pointed out the conflict between the Ninth Circuit and the Seventh Circuit as to whether *Younger* abstention should apply in eminent domain and land use cases and that this Court has not addressed the issue. *Midkiff*, 702 F.2d at 801-02 (Poole, J., concurring).[10] J.S. App., No. 83-141, A27-A28. Inasmuch as due process issues arise in almost every condemnation and land use case, abstention should be the general rule in these cases. *See* Ryckman Jr., *Land Use Litigation, Federal Jurisdiction, and the Abstention Doctrines*, 69 Calif. L. Rev. 377, 425 (1981); Theis, *Res Judicata in Civil Rights Act Cases: An Introduction to the Problem*, 70 Nw. U.L. Rev. 859, 870 (1976).

Because the Hawaii Supreme Court had held that there must be a hearing on both federal and state constitutional issues, and because such a hearing was in progress at the time of the decision of the court below, this case is strikingly similar to *Kaiser Steel Corp. v. W. S. Ranch Co.*, 391 U.S. 593 (1968). There, the district court upheld what would otherwise have been an illegal trespass on the ground that the defendant, Kaiser Steel, had rights of eminent domain under a New Mexico statute. The court of appeals reversed, holding that the statute had no public purpose as required under the New Mexico Constitution, and refused to abstain. *W. S. Ranch Co. v. Kaiser Steel Corp.*, 388 F.2d 257, 262 (10th Cir. 1967), *rev'd*, 391 U.S. 593 (1968).

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[10]A related, but different question is whether federal courts should abstain in eminent domain actions founded on diversity of citizenship. *See Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959); *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185 (1959).

Kaiser's claim for abstention was raised for the first time on rehearing based on a state court action it had filed after the opinion of the court of appeals. This Court held that the court of appeals erred in refusing to abstain because of the pending state court proceedings which would resolve the issue, ordering the district court to retain jurisdiction pending expeditious resolution of the state proceedings.

Just as there was no waiver of the abstention issue in the *Kaiser Steel* case where it was raised after the initial decision of the court of appeals, so there is no waiver here.

The concurring opinion pointed out that the issue was one of vital concern to the state of New Mexico so that there were "special circumstances" justifying abstention.

Thus, here the "special circumstances" for abstention are:

1. The compelling economic and social interests of the State of Hawaii;

2. The existing state trial on the constitutional issue;

3. The error of the court below in reappraising legislative findings; and

4. The need for findings by a state court on public use.

CONCLUSION

The Hawaii Land Reform Act may well be the most important piece of legislation enacted by the State of Hawaii. This importance and the failure of the court below to follow the decisions of this Court requires that this Court vacate the judgment of the Court of Appeals for the Ninth Circuit entered on March 28, 1983, with instructions that it reinstate the decision of the District Court for the District of Hawaii dated December 19, 1979. Alternatively, the court of appeals should be instructed to vacate the decision of the district court and require the district court to abstain from further proceedings pending the completion of litigation in the state courts.

Respectfully submitted,

PAUL, JOHNSON & ALSTON
A Law Corporation
Honolulu, Hawaii

ARCHER ROSENAK & HANSON
San Francisco, California
Of Counsel

RICHARD J. ARCHER
COREY Y. S. PARK
Counsel for Portlock Community Association (Maunalua Beach); Koko Head Community Lease-Fee, Inc.; West Marina Community Association; and Hahaione Valley Community Association, Inc., Intervenors-Appellants

Exhibit 1

In the Circuit Court of the First Circuit
of the
State of Hawaii

Civil No. 63408 (Kamiloiki Valley)

Hawaii Housing Authority,
a public body and a body corporate and politic,
Plaintiff,

vs.

Frank E. Midkiff, et al.,
Defendants.

[Filed Sept. 6, 1983]

Findings of Fact and Conclusions of Law

Plaintiff is the Hawaii Housing Authority ("HHA") of the State of Hawaii who has filed a complaint in eminent domain to condemn 257[1] houselots in the Kamiloiki Tract in the area known as Hawaii Kai in the City and County of Honolulu, State of Hawaii pursuant to its authority under HRS Chapter 516.

Named as Defendants in the Complaint are the trustees to the Kamehamea Schools/Bishop Estate, who, at the Complaint's filing, were Frank E. Midkiff, Richard Lyman, Jr., Hung Wo Ching, Matsuo Takabuki, and Myron B. Thompson ("Defendant Trustees").

[1]The original number of houselots condemned at the time of the filing of the Complaint was 257. Since that time a number of lessees have withdrawn reducing the number of houselots to approximately 253.

Also named as defendants are the individual lessees of the 257 houselots being condemned ("Defendant Lessees").

Defendant Trustees are owners of the fee title to 257 houselots being condemned. Defendant Lessees have signed leases with Defendant Trustees to lease the houselots for a term of 55 years and are owners of the improvements on the houselots. Defendant Lessees have petitioned the HHA to purchase leased fee interest of their respective houselots under Chapter 516. Pursuant to that petition, the HHA designated for condemnation under Chapter 516 the 257 houselots on October 17, 1980. On November 10, 1980, the HHA filed its complaint in eminent domain to condemn the leased fee interest to these 257 houselots.

From March 14, 1983 through June 6, 1983, this case was tried before this Court on the issue of whether this condemnation was for a public use.

Issues:

The basic issue in this case is whether this condemnation is for a public use and purpose and, therefore, constitutional under the United States and Hawaii State Constitutions. Included in this overall issue are two sub-issues:

(1) Is Chapter 516, Hawaii Revised Statutes, constitutional, i.e., are condemnations under H.R.S. Chapter 516 for a public use and purpose and, therefore, constitutional; and

(2) Is this particular condemnation in this case done to effectuate the public purposes of H.R.S. Chapter 516 and, therefore, for a public use and purpose.

Findings of Fact

I. The Current Factual Context

A. Chapter 516, Hawaii Revised Statutes: An Overview

1. Chapter 516, Hawaii Revised Statutes (hereinafter "Chapter 516"), was enacted as Act 307, 1967 Haw. Sess. Laws. It was amended by Act 46, 1968 Haw. Sess. Laws; Act 215, 1971 Haw. Sess. Laws; Act 2, 1972 Haw. Sess. Laws; Acts 184 and 186, 1975 Haw. Sess. Laws; Act 242, 1976 Haw. Sess. Laws; Act 140, 1978 Haw. Sess. Laws; Act 227, 1979 Haw. Sess. Laws; Acts 39 and 107, 1980 Haw. Sess. Laws; and Acts 203, 204 and 270, 1983 Haw. Sess. Laws.

2. The several parts of Chapter 516 were labeled by the legislature as follows:

Part I. General Provisions

Part II. Condemnation of Development Tract

Part IIA. Mandatory Arbitration of Compensation

Part III. Rights of Lessees

Part IV. Judicial Declaration

3. In this trial, the Court's principal concern has been with the Constitutionality of the provisions of Part II, concerning condemnation, and the legislative findings and declarations of necessity and purpose of the statute contained in Section 516-83 (enacted by § 2, Act 186, 1975 Haw. Sess. Laws) in § 1 of Act 307, 1967 Haw. Sess. Laws and in § 1 of Act 184, 1975 Haw. Sess. Laws.

4. Through Part II, the Hawaii Housing Authority (hereinafter "HHA"), after having determined that certain requirements have been met, may designate all or a portion of a development tract for acquisition and acquire the leased fee interests in the residential houselots in each development tract, through the exercise of the power of eminent domain or by purchase under the threat of eminent domain.

B. Chapter 516, Hawaii Revised Statutes: Legislative Findings

5. The Legislature's justification for Chapter 516 can be found in the legislative findings expressed in Act 307, Session Laws of 1967; in Act 184, Session Laws of 1975; and in Act 186, Session Laws of 1975 (HRS § 516-83).

Act 307 1967:

(a) A prime goal in the United States is the promotion of the public welfare and the securing of liberty as enunciated in the Constitution of the United States through the attainment of fee simple ownership of

residential lots by the greatest number of people. Article I, section 2 of the State Constitution recognizes this goal when it states:

"All persons are free by nature and are all equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property . . ."

(b) During the past few years, Hawaii's economy has expanded greatly and its population has grown rapidly. Concomitantly, the demand for single-family residential lots, especially in the urban areas of the State where the population growth has been concentrated, has increased sharply.

(c) The present-day land ownership system in the State is characterized by a concentration of the fee title to lands in the hands of a few. In the days of the Hawaiian monarchy, all of the lands were held by the Hawaiian kings and chiefs and a few of their faithful followers. While the concentration of ownership of land in the hands of a few may have been well-suited to the needs of the people in the day of the monarchy, it is hardly suited to the needs of the people in modern Hawaii. Yet, the pattern of concentration of land ownership in the hands of a few has remained essentially unchanged since the days of the monarchy. Today, land ownership is centered not in the monarchical government, but in the hands of a few estates, trusts and other private landowners. At least three-fourths of all privately held land in the State are

currently owned by this small group of owners. Much of this land is in the rapidly developing urban areas of the State, where the need for single-family residential lots is critical.

(d) This critical shortage of land has led large landowners to enter into complex arrangements, such as development contracts, master leases, participating leases, subleases and leases with developers. The terms and conditions of these arrangements were at that time heavily weighted in favor of the lessors or fee owners against the developers and those who participated in the development or share in the lease rentals. Neither did the participants in the private arrangements or contracts or leases contemplate, at that time, the wholesale condemnation of private lease residential lots by the State as provided in this act.

(e) The few landowners have, over the years, permitted some of their urban lands to be developed into single-family residential lots. However, because of restrictive indentures in instruments creating the various trusts and estates, and because of income taxation problems, the landowners have generally engaged in the practice of leasing, rather than selling in fee simple, the residential lots developed on their lands.

(f) The population growth and the increase in demand for residential lots, and the concentration of ownership of private lands in the hands of a few and their practice of leasing, rather than selling in fee simple, the residential lots developed on their lands, have led to a serious shortage of residential fee simple property at reasonable prices in the State's

urban areas and have deprived the people of the State of a choice to own or to take leases to the land on which their homes are situated.

(g) The shortage of single-family, residential fee simple property, and the restriction on the people of a real choice between fee simple and leasehold residential property have in turn caused land prices for both fee simple and leasehold residential lots to become artificially inflated and have enabled lessors to include in residential leases terms and conditions that are financially disadvantageous to the lessees, restrict unduly their freedom to enjoy their leasehold estates and are weighted heavily in favor of the landlord as against the lessees.

(h) In the next twenty years, it appears that the few, large landowners will continue to permit the development of leasehold, rather than fee simple, residential lots in counties exceeding 100,000 persons in population, unless legislation is enacted to reverse this trend.

(i) Even when the provisions providing for purchase of the fee simple title of residential lots by lessees or the State as provided in this act become effective, neither the lessees nor the State can possibly acquire all leasehold lands. Thus, many of the over 16,000 leasehold contracts now in existence and future leases will remain outstanding, and the economic facts stated above indicate clearly that lessees require certain statutory protection of their fundamental rights to bargain and to otherwise preserve their equitable and legal interests.

(j) The dispersion of ownership of fee simple residential lots to as large a number of people as possible, the ability of the people to acquire fee simple ownership of residential lots at a fair and reasonable price and the ability of lessees of residential leases to derive full enjoyment from their leaseholds are factors which vitally affect the economy of the State and the public interest, health, welfare, security and happiness.

Act 184, 1975:

The legislature reaffirms its findings and declaration contained in section 1, Act 307, Session Laws of Hawaii 1967, and further finds as follows:

(a) The fee simple ownership of residential lands in the State of Hawaii is still concentrated in the hands of a small number of landowners. The state and federal governments and the largest 72 private landowners own approximately 95 percent of all land area within the State. On Oahu alone, 22 major private landowners own 72.5 per cent of all land.

(b) The small number of landowners have continued to follow the policy of not selling their lands for residential use but of leasing their lands under long-term residential leases. While fee simple ownership still accounted for 68.9 per cent of all owner-occupied housing on Oahu in 1972, leasehold residential development has dominated the housing market since 1967 as it had during the period 1950 to 1967. Between 1950 and 1966, 40 per cent of all owner-occupied housing units developed on Oahu had been on leaseholds. In 1973,

leaseholds constituted 32 per cent of all owner-occupied housing, more than double the percentage in 1960.

(c) The foregoing developments have compelled thousands of people in the State to resort to leaseholds to satisfy their housing needs, and this trend is likely to continue in view of the limited availability of land for residential purposes.

(d) Residential leaseholds have had and continue to have the following undesirable economic effects:

(1) The scarcity of fee simple residential lands have pushed the price of fee simple residential units to high levels;

(2) The high levels of fee simple residential unit prices have artificially raised the level of prices for leasehold units;

(3) The high prices commanded for leasehold units have encouraged the development of leasehold residential units and discouraged the development of fee simple units;

(4) The increases in the price for both fee simple and leasehold residential lands have caused lease rentals to increase on renegotiation of rentals (on the expiration of 25 or 30 years of initial fixed rent periods) ranging from 400 per cent to 1000 per cent, for renegotiated lease rentals are invariably tied to the fee simple value of the land on which the leasehold residences are situated, and these new lease rentals have at times exceeded the amount of the payments that the lessee had been making on the leasehold mortgages;

(5) Rental renegotiations have strongly favored the lessor, the lessee having little option but to consent to such rental as determined by the lessor or to give up the leasehold and home, although the lease may yet have 25 or more years to run;

(6) The inequality of bargaining power has allowed lessors to charge lease rent based not only on the raw land value of the property but also on the value of the offsite and onsite improvements which have already been paid for or will be paid for by the lessee and on the value accruing on; and

(7) The high increases in lease rentals have caused leasehold values to drop after the initial fixed rent period (e.g., a house appraised at $68,000 before renegotiation of lease rental was increased), causing lessees opting to dispose of their leasehold interests to suffer severe economic losses.

(e) Residential leaseholds have also undesirable social effects. Lease rent negotiations are usually scheduled every 10 to 15 years after the initial fixed rent period of 25 to 30 years. Thus, as the lessee advances in age and his income potential declines, his lease rentals increase, causing him to give up the lease and to look for other accommodations. Then, when the entire lease period expires, the lessee who has stayed on the leasehold for the full term of the lease is, by reason of age, income, and the lack of value remaining in the leasehold, left without means to purchase another home. These situations aggravated the already acute need for government-sponsored low and middle income and elderly housing. With the increasing number of elderly

in this State, the problem promises to become even more acute in the foreseeable future, and will adversely affect the health and welfare of these people and the general welfare of the people of the State of Hawaii.

The legislature further finds and declares:

(1) That the land in Hawaii is to be considered as a source of life, dignity, and economic freedom for the men and women who reside on it;

(2) That it is the policy of the State that each person shall have the right of ownership of the land on which he makes his home;

(3) That it is also the policy of the State that the lessee of a residential unit, so long as he remains a lessee, shall have the right to have rentals set at reasonable levels and to enjoy his leasehold estate under reasonable terms;

(4) That the public health, safety, and welfare of the people of Hawaii demand that Act 307, Session Laws of Hawaii 1967, be fully implemented and that other applicable laws be enacted including legislation to prevent the imposition of confiscatory economic burdens upon the thousands of lessees presently living on leased property.

Act 186, 1975 (HRS § 516-83):

(1) There is a concentration of land ownership in the State in the hands of a few landowners who have refused to sell the fee simple titles to their lands and who have instead engaged in the practice of leasing their lands under long-term leases;

(2) The refusal of such landowners to sell the fee simple titles to their lands and the proliferation of such practice of leasing rather than selling lands has resulted in a serious shortage of fee simple residential land and in an artificial inflation of residential land values in the state;

(3) Due to such shortage of fee simple residential land and such artificial inflation of residential land values, the people of the State have been deprived of a choice to own or take a lease of the land on which their homes are situated and have been required instead to accept long-term leases of such land which contain terms and conditions that are financially disadvantageous, that restrict their freedom to fully enjoy such land and that are weighted heavily in favor of the few landowners of such land;

(4) The economy of the State and the public interest, health, welfare, security, and happiness of the people of the State are adversely affected by such shortage of fee simple residential land and artificial inflation of residential land values and by such deprivation of the people of the State of the choice to own or take a lease of the land on which their homes are situated and the required acceptance of such long-term leases of such lands;

(5) The acquisition of residential land in fee simple, absolute or otherwise, at fair and reasonable prices by people who are lessees under long-term leases of such land and on which such land their homes are situated and the ability of such people to fully enjoy such land through ownership of such land in fee simple

will alleviate these conditions and will promote the economy of the State and public interest, health, welfare, security, and happiness of the people of the State;

(6) The cost of living in Hawaii is and has been high. In recent years inflation has drastically increased the cost of living in the State. The spiraling cost of living affects all people through erosion of the purchasing power of whatever monetary resources they command. For a growing proportion of Hawaii's population, quite possibly a majority, the high basic cost of living is denying them such basic necessities as sufficient nutritional intake, safe and healthy housing accommodations, clothing and adequate preventive and curative health services. A substantive and significant contributing factor to the high and rising cost of living is the high cost of land whether leasehold or fee. Stabilizing the costs of land or, at least, slowing the artificial inflation of land values would curb the rising cost of living in Hawaii and, ultimately, contribute to the welfare of all people of the State by improving their standard of living;

(7) The Constitution of the State of Hawaii provides the State the power to provide assistance for persons unable to maintain a standard of living comparable with decency and health. The rising cost of land tied to other cost of living increases is swelling the ranks of those persons unable to maintain a decent and healthful standard of life. If the inflationary trend of land continues unchecked, the resultant inflationary total cost of living could create such a large popula-

tion of persons deprived of decent and healthful standards of life that the consequent disruptions in lawful social behavior could irreparably rend the social fabric which now protectively covers the life and safety of all Hawaii's people. The threat posed by this possibility is sufficiently real and imminent to warrant State action to redistribute land as a means of curbing continuing inflationary rises in land values;

(8) The right to own land is not an irrevocable grant of a special privilege where it operates against the general welfare of the many for the particular benefit of the few;

(9) Land, in common with other natural resources, is of finite quantity; a fact particularly obvious in Hawaii. In recent decades there has been growing general agreement that the wise conservation, preservation, use and management of exhaustible natural resources such as land are matters mandating an active governmental role. There is an intimate relationship between the monetary values accorded land in Hawaii and the stability and strength of the State's economy as a whole. Land values, artificially inflated by the high concentration of ownership, skew the State economy toward unnecessarily high levels. The pervasive and substantial contribution made to inflation by high land values creates a potential for economic instability and disruption. Economic inflation, instability and disruptions have real and potential damaging consequences for all members of an affected society. Checking inflation, improving the stability of the economy, and forestalling disadvantageous eco-

nomic disruptions all are productive of general benefit to all members of the Hawaiian society. The sound and wise conservation, preservation, use and management of land cannot be separated from the subject of patterns of land ownership. To accomplish the public purposes of wisely conserving, preserving, using and managing the land in the State requires changing present patterns of land ownership. Public laws, expenditures, programs, and policies which contribute to the realization of these public purposes serve a public use since they ultimately benefit the entire community. Changing present patterns of land ownership by allowing lessees under long-term leases of residential land to purchase in fee simple, absolute or otherwise, the land on which their homes are situated, through governmental intervention including exercise of the power of eminent domain to acquire fee simple title to such land and public financing of such purchase and such condemnation and payment through the issuance of bonds, the expenditure of general revenue funds, and the use of private funds which are at the disposal of the State, will help satisfy the pressing public necessity for a secure, strong and stable economy;

(10) The State's acquisition of residential lands in fee simple, through the exercise of the power of eminent domain, for the purposes of this chapter is for the public use and purpose of protecting the public safety, health and welfare of all people in Hawaii;

(11) Inflation lessens the quality of life of all members of this afflicted society and is particularly indi-

vious in its impact on the 90 plus per cent of the population who are in the poverty, and low through middle income groups. The State has limited abilities to curb inflation and, perhaps, the only useful means available is the State's power to control land values. There is a pressing public necessity for the State to do whatever it can to curb inflation and to keep the cost of living at a level where it is possible and manageable to provide all citizens a decent and healthful standard of life. The public use and purpose of providing all citizens a decent and healthful standard of life will be directly and substantially furthered by the State's acquisition of residential lands held in fee simple, through the exercise of the power of eminent domain, for the purposes of this chapter;

(12) The use of the power to eminent domain to condemn the fee simple title to residential land and the payment of just compensation therefor for the purpose of making the fee simple title thereto and the use thereof available for acquisition by people who are lessees under long-term leases of such land r on which such land their homes are situated is for a pub. e use and purpose;

(13) Legislation providing to people who are lessees under long-term leases of residential land on which their homes are situated the ability to fully enjoy such land through ownership of such land in fee simple, absolute or otherwise, is for a public purpose.

(b) It is therefore declared to be necessary and it is the purpose of this chapter to alleviate the conditions found in subsection (a) of this section by providing for the

right of any person who is a lessee under a long-term lease of residential land in the State to purchase at a fair and reasonable price the fee simple title to such land, by providing for the condemnation of the fee simple title to such land and the payment of just compensation therefor by the State through the use of the power of eminent domain and by providing for the public financing of such purchase and such condemnation and payment through the issuance of bonds, the expenditure of general revenue funds, and the use of private funds which are at the disposal of the State.

C. Chapter 519, Hawaii Revised Statutes: An Overview

6. Chapter 519, Hawaii Revised Statutes enacted as Act 185, 1975 Session Laws (hereinafter "Chapter 519") provides that renegotiated rent be calculated upon the use to which the land is restricted by the lease and, in the case of single family residential leaseholds, provides that rent be renegotiated not more than once every 15 years. It also provides a ceiling on the amount of rent that can be charged which limits the lessor's return to 4 percent on his "owner's basis." Chapter 519 is relevant both to matters addressed in the justifications for Chapter 516 declared by the legislature and to calculation of the compensation to be paid for the lessor's leased fee interest upon condemnation. The constitutionality of Chapter 519 is not challenged in this action.

D. Chapter 519, Hawaii Revised Statutes: Legislative Findings

7. The Legislature expressed the justification for Chapter 519, in Act 185, 1975 in the following findings:

The home is the basic source of shelter and security in society, the center of our society which provides the

basis for the development of our future citizens. Deprivation through exorbitant and unreasonable prices of this basic need results in frustrations and unrest in our community that is harmful to the overall fiber of our society.

Although Act 307 was enacted in 1967 the fee simple ownership of residential lands in the State is still concentrated in the hands of a small number of landowners. The state and federal governments and the largest 72 private landowners own approximately 95 percent of all land area within the State. On Oahu alone, 22 major private landowners own 72.5 percent of all land.

Although with this concentrated ownership of land there exists in the State of Hawaii a critical shortage of housing units for all income levels. There will be a need for over 250,000 low and middle income units by 1985 and a need will exist for all types of units. Since 1961 the economy has been producing an average of less than 10,000 low and middle income units annually. The economy has similarly lagged in the production of all other units, except the very high priced.

The small number of private landowners have continued to follow the policy of not selling their lands for residential use but of leasing their lands under long term residential leases. While fee simple ownership still accounted for 68.9 percent of all owner-occupied housing on Oahu in 1972, leasehold residential development has dominated the housing market since 1967 as it has during the period of 1950 to 1967. Between 1950 and 1966, 40 percent of all owner-occupied housing units developed

on Oahu had been leasehold. Between 1967-1972, 46 percent of such development has been on leaseholds.

The foregoing developments have compelled thousands of people in the State to resort to leasehold residences to satisfy their housing needs, and this trend is likely to continue in view of the limited availability of land for residential purposes.

The predictions of Act 307 as to effects of the residential leasehold system have proven to be conservative. Today, there are over 26,000 outstanding residential leases, an increase of more than 10,000, since Act 307 was enacted. As stated in Act 307, the concentration of land ownership 'is in the rapidly developing urban areas of the State, where the need for single family residential lots is critical'.

Initially, lease rents were low or were within the range which the public could afford. However, in the renegotiation of rents that have occurred in recent years, tremendous increases in lease rents have been imposed upon countless lessees by lessors. The compensation provided to be paid to lessors under Act 307 was directly related to the present value of the lease income stream generated under the lease to be condemned. Since June 24, 1967 lessors have generally adopted a practice of increasing lease rentals on renegotiations of existing leases in a manner unrelated to the raw land value, thereby greatly increasing the cost to the lessee when exercising his rights under Act 307 and resulting further in unconscionably increasing lease rents.

Renegotiation has brought about staggering increases in annual lease rentals. These increases have been the

direct result of inflated land values which in turn have come about because of the supply of urban land for residential housing under the concentrated ownership described in the findings contained in Act 307. The effect of these increases has been to substantially increase the cost of leasing housing for the people of Hawaii. The increases in lease rentals and premiums required prior to leasing of residential property has accentuated the problem stated in section 1(g) of Act 307 to the effect that the continuation of the residential leasehold system causes an artificial inflation in the price of fee simple residential property, as well as leasehold residential property.

Further, because of the unequal bargaining power between large landowners and individual lessees there have been breakdowns in the normal processes of bargaining and freedom of contract, resulting in unjust, unreasonable and oppressive lease rents being exacted by lessors. Thus the limited supply of housing units and concentrated ownership of such units have led to the exaction of exorbitant lease rents on renegotiation. In many instances, the lessor's terms are peremptorily submitted to the lessee in the ultimatum form through letters rather than through any actual bargaining process.

This unequal bargaining relationship exists today despite the rights granted lessees under Part III of Act 307 which was passed some seven years ago. Accordingly the adverse and harmful effects sought to be alleviated by that Act have not been stemmed, but to the contrary have become more critical.

In addition the inequality of bargaining power due to the oligopolistic imbalance in land ownership has allowed the lessor to charge lease rents based not only on the raw land value of the property but also on improvements which have already been paid for by the lessee and on the value accruing thereon; thus the lessee is, in effect, paying the lessor for an investment made by the lessee. This is an unjust enrichment created by an oligopolistic market lacking competitive bargaining and is contrary to the public welfare.

Inasmuch as the free market cannot correct this situation because of the lack of competition, inherent in an oligopolistic market, it is necessary for the public good and welfare that the imbalance be redressed.

Residential leaseholds have had and continue to have undesirable economic effects. The high prices commanded for leasehold units have encouraged the development of leasehold residential units and have discouraged the development of fee simple units. The increases in the price for both fee simple and leasehold residential lands have caused lease rentals to increase on renegotiation of rentals (on the expiration of 25 or 30 years of initial fixed rent periods) as much as 1000 percent; renegotiated lease rentals are invariably tied to the fee simple value of the land on which the leasehold residences are situated. These new lease rentals have at times exceeded the amount of the payments that the lessee had been making on the leasehold mortgages. Rental renegotiations have strongly favored the lessor, with the lessee having little option but to consent to such rental as determined by the lessor or to give up the leasehold,

although the lease may yet have 25 or more years to run. The high increases in lease rentals have caused leasehold values to drop after the initial $68,000 before renegotiation of lease rent has been appraised at $59,000 after the lease rental was increased), causing lessees opting to dispose of their leasehold interests to suffer severe economic losses.

Residential leaseholds have had undesirable social effects. Lease rent negotiations are usually scheduled every 10 to 15 years after the initial fixed rent period of 25 to 30 years. Thus, as the lessee advances in age and his income potential declines, his lease rentals increase, causing him to give up the lease and to look for other accommodations. Then, when the entire lease period expires, the lessee who has stayed on the leasehold for the full term of the lease is, by reason of age, income, and the lack of value remaining in the leasehold, left without means to purchase other housing. These situations have grave effects on the health, welfare, and well-being of elderly persons and aggravate the already acute need for government-sponsored, low and middle income and elderly housing. With the increasing number of elderly in this State, the problem promises to become even more acute in the foreseeable future.

The legislature declares that it is the policy of the State that the lessee of a residential unit, so long as he remains a lessee, shall have the right to have rentals set at reasonable levels and to enjoy his leasehold estate under reasonable leasehold terms; that the public health, safety and welfare of the people of Hawaii demand that legislation be enacted to prevent the imposition of con-

fiscatory economic burdens upon the lessees of residential property; that pursuant to and based upon the findings stated, above, the public health, safety and welfare is severely and substantially affected and threatened, resulting in immediate, continuous, and irreparable harm and that all the conditions and circumstances set forth herein constitute a social emergency which it is the purpose of this act to prevent and remedy.

E. The Parties

8. Plaintiff, the Hawaii Housing Authority, is a public body corporate and politic with perpetual existence organized and existing under the laws of the State of Hawaii.

9. Defendant Lessees are lessees of residential lots owned by Defendant Trustees and located in the development tract known as Kamiloiki in the area known as Hawaii Kai in the City and County of Honolulu, State of Hawaii. The interests of the Defendant Lessees are adverse to those of the Defendant Trustees.

10. Defendants Kaiser Hawaii-Kai Development Co., Kaiser Aetna, and Kacor Realty, Inc. are the subdividers and developers of the subject property, and have an interest in the lease rents obtained therefrom, but did not participate in either the valuation or public use segments of this trial.

11. Defendant Trustees are all residents of the City and County of Honolulu, State of Hawaii, and are the Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased, a trust estate created for charitable and educational purposes.

F. Activity Under Chapter 516

12. At least twenty-five separate condemnation actions have been filed against Defendant Trustees under Chapter 516. This is the first of those actions to go to trial. In a jury trial last year, presided over by Judge Arthur Fong, the compensation to be paid Defendant Trustees for their leased fee interest in the 257 lots was determined by jury verdict.

13. Condemnation actions have also been filed and are pending against other lessors. Summary judgments against two of them on the constitutionality of Part II of Chapter 516 were reversed by the Hawaii Supreme Court. *Hawaii Housing Authority v. Castle,* 65 Haw. Adv. No. 8468, 653 P.2d 871 (November 10, 1982) and *Hawaii Housing Authority v. Brown* (unpublished memorandum opinion filed on November 10, 1982, Sup. Ct. No. 8489) on the grounds that the evidentiary record was lacking.

14. As a result of the Hawaii Supreme Court rulings just mentioned, Defendant Lessees withdrew their Motion for Partial Summary Judgment That This Condemnation Fulfills A Public Purpose and this evidentiary trial on the public use issue ensued.

II. Legislative History

15. The legislative history of the Land Reform Act demonstrates that the Hawaii State Legislature was deeply concerned with the concentration of land ownership and perceived the residential leasehold practice to be detrimental to land use, housing and other aspects of the states' economy and public concern. The Legislature's extensive investigation and research demonstrates that the Legislature did not act hastily, unreasonably or to serve any spe-

cial or selfish interest when it enacted and amended the Land Reform Act.

16. From 1955 through 1975, the legislature drafted and passed successive pieces of legislation to investigate, determine possible solutions and to rectify these problems concerning residential leasehold land tenure, the concentration of landownership, the resulting inflation in land prices, the desire for people to own their houselots in fee simple, and the effect on the public's health and welfare. These legislative actions culminated in HRS Chapter 516 as amended.

17. On April 23, 1955, the Territorial Senate passed Senate Resolution No. 49 requesting the estates and corporations in the Territory holding land for investment or speculative purposes to submit to the Legislative Reference Bureau written statements giving in detail their plans to comply with the sense of that resolution. That resolution states in part:

> WHEREAS, the limited land area of the Territory makes it essential not only that all of our land be put to its highest and best use but that the ownership of such land be diversified to the greatest possible extent; and
>
> WHEREAS, the ten largest land holders own about 30% of the total area and about 50% of the total privately owned land in the Territory; and
>
> WHEREAS, this concentration of land ownership in the hands of large trusts and corporations, holding such lands in perpetuity for investment and speculative pur-

poses, not only violates the principles of prudent investment but is deleterious to the economic and social welfare of the Territory; and

WHEREAS, the Senate of the 28th Legislature is not satisfied with the various emotional arguments made and inadequate excuses given for the failure of certain large land holding interests to diversify their investments and markedly increase the amount of fee-simple land on the market; and

WHEREAS, the Senate of the 28th Legislature is aware that the rapidly waning days of the session will not allow the enactment of carefully considered legislation aimed at forcing proper dissolution of certain inordinately large land holdings; and

WHEREAS, such drastic action may become unavoidable in the near future if the various land holding trusts and corporations do not, of their own accord, take immediate steps to diversify their holdings and release to the people of the Territory substantial areas of fee simple land; now, therefore, . . .

(Exh. 61)

18. In 1959, the Territorial Senate drafted Senate Bill No. 7, "An Act Creating The Hawaii Land Development Authority, Providing For The Purchase Or Condemnation Of Certain Private Lands For Resale Or Lease To Private Parties Or To The Various Counties Or The Territorial Government For The Development Of Residential, Com-

mercial, Or Agricultural Uses, And Making An Appropriation Thereof." (Exh. 62) The following legislative committee reports were drafted concerning Senate Bill No. 7: Senate Standing Committee Report No. 312, dated April 16, 1959; Senate Standing Committee Report No. 512, dated April 23, 1959; House Select Committee Report No. 1, dated May 2, 1959; Select Committee Report No. 1, Supplement, dated May 2, 1959; Senate Conference Committee Report No. 1, Supplement, dated May 2, 1959; Senate Conference Committee Report No. 15, dated May 2, 1959. (Exh. 62)

Senate Standing Committee Report No. 312 states in part:

"1. The purposes of Senate Bill No. 7 is to create the Hawaii Land Development Authority, a public corporation, which will have the power to designate certain areas as development areas for the purpose of making available needed lands for residential, commercial or agricultural uses. The bill provides for the disposition of land so acquired and developed to persons who meet the requirements of the bill. The bill further provides that a private developer may make funds available to the authority for the purchase of a designated area and develop said area according to plans and specifications formulated in advance by the authority. The bill further provides that all persons owning land areas exceeding 5,000 acres shall annually file, under oath, a declaration of value, together with a stated offer to sell to the authority at any time during the 12-month period the parcels owned at the valuation stated plus 25%. The bill further provides that the authority shall issue revenue bonds to finance its projects.

Your Committee has held hearings on the bill and finds that there exists a need for the availability of lands contemplated by the bill; that owners of large tracts of land are unable or unwilling to develop their lands adequately, thereby creating an artificial scarcity of lands resulting in an artificial inflation of prices. This artificial inflation of prices makes it impossible for persons of moderate circumstances to purchase or own homes or lands at reasonable prices or at any price in sufficient numbers to provide for the constantly growing population of the Territory, especially on Oahu.

Your Committee finds that this condition is gravely detrimental to the public health and welfare. Your committee finds that the acquisition and development of land areas by the government, so as to meet the present need, will establish a well-balanced community in which our limited land areas will be put to their highest and best use.

Your Committee is in accord with the purpose of Senate Bill 7 and recommends that it pass second reading and that it then be referred back to the Committee on Lands for further consideration."

(Exh. 62)

House Select Committee Report No. 1 states in part:

"2. The problem of fee simple vs. leasehold: Much has been said on the relative merits and demerits of fee simple and leasehold land for home sites.

We believe that Oahu does present a special situation in this regard because of the intrinsically high cost of land. However, we feel that a free citizen in a country

such as ours should have the opportunity to own his own home and the land on which it stands. Home ownership in fee gives the owner a sense of permanence and status. Further, land on Oahu is recognized as one of the best investments. This is true not only because of the inevitable accrual of value as the community develops but also because land in Hawaii is an effective hedge against inflation. The Bishop Estate has pointed with pride to the fact that its assets have increased tenfold in value since the end of World War II, from about $6,000,000 assessed valuation to about $60,000,000. We feel that the average citizen should have the right to enjoy for himself and his heirs a similar accrual of value.

At the present time, the average citizen has very little choice between fee and leasehold land. This lack of choice for the person of moderate means is the result of many factors including (a) the high cost of land, which forces buyers into the leasehold market; (b) the rising cost of construction and the shortage of available mortgage money which dictates that nearly all of a buyer's available capital must be put into the house, again forcing him into the leasehold market, (c) the taxes on the seller of land imposed by the Federal government which can, in some instances, make voluntary sale of the fee impractical; and (d) the natural desire on the part of the large landholders to retain the fee and thus the unearned increment arising from the ever increasing value of the land. As a result of these pressures, Bishop Estate, which according to their own testimony, use to maintain a relationship of four leasehold lots to three fee simple, will, in the next few years, put on the market about thirty lease lots to one fee simple.

This means that the average citizen will not longer have a choice; he will have to take a lease if he wants a house. S. B. No. 7, S. D. 4, H. D. 1 is aimed at providing this choice. The land can be developed for sale in fee or, in cases where the costs are high, for lease with option to purchase. Provision has also been made to provide leasehold lots where conditions dictate."

(Exh. 61)

19. In 1959, the Territorial House of Representatives drafted House Bill No. 7 which was its version of Senate Bill No. 7. (Exh. 63)

20. On March 2, 1959, the first meeting of the Public Lands and Land Reform Committee of the Senate was held. At that meeting the following objectives were approved as they related to Land Reform:

"A. To determine the effect of continued control of private lands by large landowners on:

1. Shortage of fee simple lands for:
   a. Houselots
   b. Industrial lots
   c. Diversified agriculture
2. Economic expansion of Hawaii
3. Leasehold system

B. To determine ways and means, if found necessary to:

1. Utilize idle lands to the best advantage of our economy by:
   a. Taxation

b. Incentives

c. Condemnation

d. Other proposals which may be submitted by members or land holders

C. To determine ways and means to accelerate the use of Territorial lands for the purpose of providing lands for industrial, agricultural and houselots."

(Exh. 65)

The following were findings of the pre-legislative hearings on land matters as conducted by the House Committee on Judiciary and Land Reform as was presented to the March 2, 1959 meeting of the Senate Committee on Public Lands and Land Reform:

"1. Government (Federal, Territorial and County) owns 42% of the land in the Territory; 60 landholders of 5,000 acres or more own 46%; and 60,000 holders, 11%.

2. The cost of homes and lots is considerably higher in Hawaii than on the mainland. The Comparative prices were given as follows:

	Hawaii	USA
House	$15,400	$12,100
Lot	4,200	1,600

The higher cost of land, materials and offsite improvements in Hawaii was given as the reason for the wide gap in the price structure. Representative Gill further pointed out the difference in construction of house: single-wall vs. double-wall brick construction on the mainland.

3. Thirty percent of the homes in Hawaii are owner-occupied; on the mainland the owner-occupancy is 60%.

4. Thirty-five percent of the wage-earners fall in the $3,500 to $6,000 income class. Those earning below $3,500 are eligible for public housing; those earning $6,000 and over can afford private housing under existing market prices; but, the individuals in between the two classes are ineligible for public housing and unable to afford private housing now available on the market.

5. Private and eleemosynary trusts are faced with the following problems:

a. Fear to sell because of restrictions under trust indentures or because of tax reasons.

b. Shortage of finances.

c. Inability to borrow finance improvements.

d. High cost of developments.

6. The key to the situation is "condemnation or the threat of condemnation". Under condemnation or threat of condemnation, the trustees of the estates will:

a. Be able to justify their actions under the trust instrument.

b. Get land on the market.

c. Get the tax benefit.

d. Get sufficient funds from the sale of the land for the development of other lands or for higher-income producing investments."

(Exh. 65)

21. During committee hearings on Senate Bill No. 7 and House Bill No. 7, Trustees from the Bishop Estate and the Estate of James Campbell presented testimony. (Exh. 66)

22. On March 12, 1959, the Senate Committee on Public Lands and Land Reform sent letters to the following landholders requesting their appearance before the Committee to give information on land holdings, development plans and to state their respective positions on Senate Bill No. 7: Bishop Estate, Queen's Hospital, Liliokalani Trust Estate, Sherwood Greenwell, James W. Campbell Estate, Molokai Ranch Co., L.C. McCandless Estate, H.K.L. Castle Estate. All except Queen's Hospital responded to the Committee's request. (Exh. 66, 69)

23. In connection with Senate Bill No. 7 and House Bill No. 7, the legislature received comments from, *inter alia*, the Chamber of Commerce of Honolulu; Hawaiian Sugar Planters Association, Hawaiian Civic Club, Kaloaloa Neighborhood Association. (Exh. 72)

24. On January 2, 1959, the House Committee on Judiciary and Land Reform had sent supplemental questions on landholdings and development practices to representatives of large landholders. (Exh. 75) Some of the landholders responding to the questionnaire on land holdings and practices were the Bishop Estate (Exh. 76); the Campbell Estate (Exh. 77); the Heirs of Mary E. Foster (Exh. 78); the Damon Estate (Exh. 79); W. M. Greenwell, Ltd., (Exh. 80); Castle & Cook (Exh. 81); Hawaiian Commercial & Sugar Co., Ltd., (Exh. 82); Hawaiian Dredging & Construction Co., Ltd. (Exh. 83); Hawaiian Pineapple Co., Ltd., (Exh. 84); Mr. H. K. L. Castle and Kaneohe Ranch (Exh. 85); the Liliuokalani Trust (by Cooke Trust) (Exh. 87); the L. C. McCandless Estate (Exh. 88); the Queen's Hospital (Exh. 89); the Molokai Ranch (Exh. 90).

25. Additionally, the Legislature received testimony on House Bill 7 from the Honolulu Board of Realtors; the Chamber of Commerce of Honolulu; Dudley C. Lewis, the Trustee of Estate of S. M. Damon; Aaron M. Chaney, of the Cooke Trust Co.; the Estate of James Campbell; the Territorial Council of Hawaiian Civil Clubs; Frank E. Midkiff, Trustee of the B. P. Bishop Estate; and the L. C. McCandless Estate. (Exh. 92)

26. In 1959, the Territorial Legislature passed, and the Territorial Governor signed into law, Senate Bill No. 7, "An Act Creating The Hawaii Land Development Authority, Providing For the Purchase or Condemnation of Private Property on the Island of Oahu For Resale, lease or lease With Option To Purchase To Private Parties For The Development Of Residential Uses And Other Facilities In Connection Therewith, And Making An Appropriation." This bill became Act 279. Section 1 of Act 279 states:

SECTION 1. *Findings and declaration of necessity.* The Legislature hereby finds and declares that: (a) there exists a critical shortage of residential fee simple property on the Island of Oahu; (b) this shortage has created an artificial scarcity and resulting high prices making it extremely difficult or impossible for persons of moderate means to own their own homes; (c) a large and expanding population in a growing economy will further aggravate the already existing shortages; (d) a prime goal of land policy in the United States has been to promote the public welfare through the greatest possible attainment of individual home ownership; (e) the high percentage of private land held by relatively few owners

on an island of very restricted area coupled with the inability or unwillingness of some of these large owners, because of trust indentures or strong contributing factor in creating this critical shortage and the accompanying artificial price inflation; (f) available and suitable public lands on Oahu are insufficient to adequately relieve the existing shortage of residential lands either in fee or in lease; (g) where the goal of home ownership is not immediately attainable for people of moderate means, leasing or leasing with an option to purchase house lots can provide an interim method of meeting a portion of the housing need; (h) it is therefore necessary that the government acquire through its power of eminent domain and sufficient lands to develop to meet the present need and establish a well-balanced community where fee ownership is a right, and in which limited land areas may be put to their highest and best use; and (i) it is hereby declared as a matter of legislative determination that acquisition and development of land hereunder is declared to be a public use and purpose.

(Exh. 95)

27. On June 25, 1959, Senate Bill No. 10, was enacted as Act 269, "An Act Authorizing The Subdivision, Improvement And Leasing Of Public Lands For Residential Purposes To Qualified Persons Selected By Drawing Without Public Auction; Creating The Residential Lease Advisory Commission And Providing For Its Powers, Duties And Functions; And Amending Inconsistent Laws." Section 1 of Act 269 states:

Findings and declaration of necessity.

It is hereby found and declared that:

(a) There is a shortage in the Territory of land suitable for residential use and available to persons whose incomes and circumstances are such that they do not qualify for or do not require publicly provided low-rent housing accommodations and who are able to secure financing for the construction of their own homes, but who are unable through lack of sufficient financial ability to purchase land in fee simple or to pay the premiums for and rentals under leaseholds offered for sale by private landowners.

(b) This group includes persons whose residential property has been taken for public purposes and who, while they have received the full and fair value of their property, by purchase or condemnation, are unable to replace the property taken with the proceeds paid or other available funds because of the shortage of similar property in the community.

(c) This situation has prevented many citizens of the Territory from improving their standards of living in accordance with their means and has forced many into residential property purchase or lease contracts beyond their means.

(d) This situation has also forced many citizens of the Territory into private or publicly provided low-rent housing facilities with the result that the purposes for which public low-rent housing facilities are provided have been injuriously affected and with the further result that both urban development and urban renewal projects have been not only impeded but also become more urgently required.

(e) Experience has demonstrated that when public lands are subdivided and sold in fee simple at public

auction, for residential use, the demand for residence property has forced the price of such lands beyond the financial reach of the persons previously mentioned, and that neither the program of opening public lands for sale in fee simple as residence lots, nor the programs for providing low-rent public housing, for urban redevelopment or for urban renewal are adequate or designed to provide the opportunity for such persons to provide themselves with the decent, safe, sanitary and uncongested residence accommodations consistent with their financial ability and necessary to provide the environment conducive to promoting their own and their children's good citizenship.

(f) The alleviate this shortage of land suitable for residential use, to promote the accomplishment of the purposes of the programs for public low-rent housing, urban redevelopment and urban renewal, including the elimination of slum and other conditions detrimental to the public health, safety and welfare, it is necessary that public lands be made available on terms within the financial means of those citizens who, because of the shortage before mentioned, are unable to purchase public or private lands in fee simple or to lease private lands for use for residential purposes. Making public lands available for such purposes, pursuant to the provisions of this act, is hereby declared to be a public purpose.

(Exh. 94)

28. In the 1961 session, the legislature drafted House Bill No. 7, "An Act Creating The Hawaii Land Development Authority, Providing For the Purchase or Condemnation of Certain Private Lands For Development For

Residential Uses and Resale To Or Lease With Option To Purchase By Private Parties, And Making An Appropriation Therefore." Section 1 of House Bill No. 7 states:

> SECTION 1. *Declaration of findings and need.* The legislature hereby finds and declares that there is a shortage on the Island of Oahu of lands suitable for residential use and available for purchase by persons in moderate circumstances; that this situation tends to artificially inflate the prices for which available residential lands may be acquired and to aggravate the shortage of suitable housing accommodations for the population of the Island of Oahu; and that the acquisition and development of land areas by the government is necessary in order to meet the present need.

(Exh. 100)

29. In the 1961 session, the legislature drafted House Bill No. 166, "A Bill For An Act Amending, And As So Amended, Re-enacting, Ratifying, and Confirming Act 269 of the Thirtieth Legislature, Territory of Hawaii, Regular Session 1959."

(Exh. 105)

30. House Bill No. 166 was made necessary because Act 269 was enacted in 1959 while Hawaii was a territory and had to be re-enacted after statehood.

(Exh. 102)

31. In the 1961 session, the Legislature drafted House Bill No. 16, "A Bill for an Act Providing For the Purchase of the Fee Simple Title By Lessees And Sublessees Of Certain Residential Houselots and Providing Procedures

For the Conveyance of Such Titles By Trustees, Life Tenants, Holders of Refeasible Estates, Infants and Incompetents." Section 1 of House Bill No. 16 states:

> *Policy.* It is hereby declared that long term leases of residential houselots in the state are contrary to public policy because they are inimical to the establishment of stable, permanent residential communities and are injurious to the social and economic well-being of its citizens. It is hereby declared that fee simple ownership of residential lots is the public policy of the state and that all long term leases shall, by law, as hereinafter provided, be subject to an option on the part of the lessee of sublessee to purchase the fee.

(Exh. 104)

32. House Standing Committee Report No. 80 on House Bill No. 16 states in part:

> Your Committee held two hearings on this bill wherein the previous objections recorded in past session of the legislature were again reiterated by Mr. J. Garner Anthony, representing the Bishop Estate; Mr. Baird Kidwell, representing the trust companies; and Mr. Wade McVay, representing the Campbell Estate.
>
> Your Committee is of the opinion that this piece of legislation is long overdue. It believes that the numerous other ways which the legislature has sought to alleviate the housing shortage and to encourage the fee simple ownership of homes have been to no avail. Therefore it believes that it is imperative that the legislature specifically declare that fee simple ownership of homes is the public policy of our state. It also believes that the right

to redeem long term leases is necessary to effectuate this public policy.

(Exh. 103)

33. During the 1961 session, the legislature drafted Senate Bill No. 378 entitled, "An Act Providing For the Purchase Or Condemnation Of Private Property On the Island Of Oahu For Resale, Lease Or Lease With Option To Purchase To Private Parties For the Development Of Residential Use and Other Facilities In Connection Therewith, And Making An Appropriation." The purpose of this bill was to re-enact Act 279, Session Laws of Hawaii 1959.

(Exh. 106)

34. On May 4, 1961, Governor William Quinn signed into law Senate Bill 378 designated as Act 6 of the Session Laws of Hawaii 1961 and entitled, "An Act Providing for the Development of Lands For Residential Uses and Other Related Facilities And For the Purchase or Condemnation of Private Property In Connection Therewith on the Island of Oahu; And Providing For the Financing Thereof." The legislative findings and declarations of Act 6 remained unchanged from those stated in Findings of Fact No. 26 referring to Act 279.

(Exh. 107)

35. In the 1963 session, the Legislature drafted House Bill No. 409, "A Bill For An Act "Providing for the Right of Purchase Of Fee Simple Title By Lessees Of Residential Real Property And For Procedures For Conveyance Of Title By Lessors And Parties Whose Interests Are Affected." Section 1 of House Bill No. 409 states:

Policy. It is hereby declared that fee simple ownership of residential real property is the public policy of

the state and that all long term residential leases shall be subject to an option to purchase the fee on the part of the lessee as hereinafter provided.

(Exh. 108)

36. During the 1963 session, the Legislature drafted House Bill No. 24, "A Bill For An Act Relating To The Redemption Of Leases And Sub-leases Of Residential Real Property; Providing Procedures For Conveyance Of Title By Trustees, Life Tenants, Holder Of Defeasible Estates, And Infants."

The House Standing Committee Report No. 33 on House Bill No. 24 states in part:

The purpose of this Act is to provide that all leases of residential real property, if for a term of fifteen years or more, may be ended at the option of the lessee or tenant who has used the residential real property as his personal residence for at least five years upon the payment to the owner of the capitalized value of the rent under or reserved by the lease after the expiration of five years from the date of such lease or sub-lease, and upon such payment to have the fee simple title to the property vest in the lessee or tenant.

Section 1 of House Bill No. 24 states:

Findings and declaration of necessity. The legislature finds that: (1) a limited number of landowners own more than three-quarters of the privately-held land in the State; (2) much of this land is in rapidly developing urban areas; (3) such a concentration of ownership of private land results in a practical land monopoly, and causes upward pressures on land prices; (4) such pressures are made more intensive by the development prac-

tices of these large landowners or making land available in rapidly developing areas only as leaseholds and not in fee simple; (5) the ability of a large number of people to acquire fee simple ownership of residential lots at a fair and reasonable price is an important factor which vitally affects the development of the community; (6) the number of residential leaseholds and the proportion these leaseholds constitute of the total number of residential lots have increased at a very rapid rate during the past fifteen years so that today approximately fifteen per cent of all owner-occupied units in the State are on lease lands and approximately twenty per cent on the most urbanized on the islands; and by 1980 it is likely that more homes will be located on leased than fee simple land; (7) it is also likely that more than eighty per cent of the new residential lots which will become available for owner-occupancy between now and 1980, especially in the most urbanized areas will be leaseholds unless significant changes are effected; (8) such a limited availability of fee simple land for residential purposes effectively deprived the people of Hawaii who desire to purchase new or relatively new residences of the right to choose whether they wish to own the land or lease the land on which their homes are situated and makes such people live dependently upon the land of others.

It is hereby declared as a matter of legislative determination that the scarcity of fee simply houselots within the State of Hawaii and, in particular, in the urban areas, is a matter affected with the public interest and that measures to provide for the right of individuals to purchase the fee simple title to houselots are necessary in furtherance of the general welfare.

37. Testifying on House Bill No. 24 were the Christian Social Action Sub-Committee on land; the Central Labor Council of Honolulu, AFL-CIO; three trustees of the Bishop Estate; the Builders Association of Hawaii; the Kaneohe Ranch Company; H. B. Kidwell on behalf of Harold K. L. Castle; and the Council of Hawaiian Organizations; the Estate of James Campbell; the Honolulu Board of Realtors; and the Home Builders Association of Hawaii. (Exh. 110, 111) This bill was commonly called the Maryland Land Law and was narrowly defeated in 1963.

38. During the 1965 session, the Senate passed Senate Resolution No. 128 calling for the Legislative Reference Bureau to up-date its 1961 study of large private landowners and land use in the state.

(Exh. 112)

39. During the 1967 session, the Legislature drafted Senate Bill No. 1128 entitled, "A Bill For An Act Relating To Residential Leaseholds, The Acquisition By The State through Condemnation of Lands in Fee Simple And The Desposition Thereof, And The Rights of Lessee," which was enacted in that session as Act 307, the Land Reform Act. Act 307 provided that the effective date of the act's authority to obtain fee simple title would not be until July 1, 1969. The purpose of this delay was to allow the Legislature to receive additional input from the community on the Act. (Exh. 118)

40. Between the enactment of Senate Bill No. 1128 and the effective date of Act 307 and beyond, the Legislature sought and received information and written testimony from landowners and community organizations including the Bishop Estate, the Council of Hawaiian Organizations;

the Honolulu Board of Realtors; the Legislative Reference Bureau; the Savings and Loan League of Hawaii; the Estate of James Campbell; the Bank of Hawaii; the Dillingham Corporation; the Mortgage Bankers Association of Hawaii; the Kaiser Hawaii-Kai Development Company; the Kaneohe Ranch; Lewers and Cooke; the Pearl Harbor Heights Developers; the Veterans Administration; Thomas McCormack; the Liliuokalani Trust; The Windward Oahu Chamber of Commerce; the Chamber of Commerce of Hawaii; and Chaminade College (Exh. 115, 116, 117).

41. Legislative hearings were scheduled by the Interim Committee on Lands, House of Representatives on Act 307 on November 16, 1967 for bankers, savings and loan institutions, mortgage companies and federal agencies; November 17, 1967 for land developers; and November 19, 1967 for land owners and the realty board. (Exh. 115) Further hearings were held on April 25, 1967. (Exh. 116)

42. The House Special Committee Report No. 2, dated April 10, 1967, reported that that committee along with representatives from the Bishop Estate, the Campbell Estate and the Kaneohe Ranch Co. met on April 6, 1967 with officials from the Internal Revenue Service to discuss the possible adverse income tax consequences to lessor-landowners upon the sale of fee simple title to the lessees under various bills before the Legislature. At the conference, two general approaches were discussed: (1) statutory options under which lessees could purchase the fee simple interests of lessors; and (2) condemnation of residential houselots by a government agency for subsequent re-sale to the lessees residing thereon. The tax ramifications of both approaches were examined thoroughly. The committee report concluded

that adverse tax consequences to the lessor-landowner could be avoided, according the Internal Revenue Service, if the relevant statute called for condemnation in bulk, i.e., condemnation of an entire tract through which the State may become the lessor of those lots, which after condemnation, the lessees choose not to buy. (Exh. 127)

43. To accommodate the large landowners who did not want to be taxed as dealers in real estate on the proceeds of the lots sold under Senate Bill 1128, the Senate redrafted Bill 1128 in accordance with the indications of the Internal Revenue Service to provide for condemnation in bulk. Senate Standing Committee Report No. 483 states in relevant part:

> In your Committee's conference with the officials of the Internal Revenue Service, as more fully discussed in the special committee report, a distinct impressions was conveyed to those as the meeting, that with respect to leases in existence at the time the legislation is enacted, no adverse income tax consequences are anticipated regardless of the approach taken to require the conveyance of fee titles by the lessors to lessees. As to leases executed after the date of exactment of the legislation, however, the tax status of the landowners could conceivably be affected adversely, depending on the approach taken. Your Committee finds that the one approach which can apply to both existing and future leases is condemnation of land in bulk.
>
> Upon due consideration, your Committee has amended the bill. The amendments and the major provisions of the bill, as amended, are as follows:
>
> • • •

2. Parts II, III and IV of the bill have been deleted. The substance of part II was incorporated into part I. Part III of the original bill provided for an option in the lessees to purchase the fee interest of the owner of the land and part IV provided for condemnation of individual leasehold lots by the Hawaii Housing Authority on the application of the lessee of a single lot. Both of these approaches could conceivably be applied to existing leases without any serious tax consequences to the landowners, although perhaps not as to future leases. However, since part IV of the original bill which provided for condemnation-in-bulk approach can apply to both existing and future leases without serious tax liability on the landowners, your Committee has adopted the part IV approach and deleted parts III and IV.

• • •

The residential lots acquired or developed are to be leased or sold, in fee simple, with sale being the primary method of disposition. All lessees of residential lots owned by the authority—whether they were lessees at the time of the acquisition of the tract by the authority or became lessees after the acquisition of the tract—have the option to purchase the fee at any time during the term of their leases.

44. Senate Standing Committee Report 483 on Senate Bill No. 1128 states in part:

Introduction

The primary purpose of this bill is to provide means by which the lessees of residential leasehold lots may become vested with the fee simple title to their lots. In addition, the bill has as its purpose, the development of

condemned raw land into residential houselots and the protection of lessees residing on leaselots.

The intent of this bill, in one form or another, has been before the legislature for the past few years. Numerous hearings were held during those years by legislative committees at which the representatives of large, private landowners and others interested in the bill testified. One of the chief objections posed in the years past was the fear that forced sales of residential lots which are under leases may result in high income tax liability to the landowners under the applicable provisions of the Internal Revenue Code.

Your Committee during this session again held a number of conferences and hearings attended by the representative of the landowners to find possible ways and means of making more residential lots available in fee simple to the lessees. As a part of this effort, several members of your Committee, together with several members of the House of Representatives, met with the officials of the Internal Revenue Service at Washington, D.C., to explore the tax consequences to landowners under different legislative approaches to the problem of making the fee simple title to residential lots available to the lessees. A special committee report, outlining the results of that conference, was previously submitted to the members of the Senate.

Your Committee reviewed S. B. No. 1128 in the light of the special committee report. It held conferences with the representatives of the large, landowners and received their views on the bill. Your Committee's findings are as follows.

Land Ownership

More than three-fourths of all privately held lands in the State are owned by a few trusts, estates and private persons. Much of these lands are situated in the urban areas on the island of Oahu. This virtual monopoly over privately held lands is traditional. It had its beginnings in the days of the Hawaiian monarchy when all the lands in Hawaii were owned by the kings and chiefs and few others to whom the kings and chiefs parceled out parts of the lands. Over the years, the lands held by the kings and chiefs and the few people passed into the hands of the small number of present day owners.

Although this pattern of land ownership (that is, the concentration of ownership in the hands of a few) may have suited the needs of the people of ancient Hawaii, it no longer meets the needs of the people of modern Hawaii. Hawaii has been in the throes of great economic boom, population increase, and social and political changes, especially since the advent of statehood. Much of this change has been taking place in the urban areas of Oahu where the few landowners own a bulk of the private lands.

The changing nature of our economic, social and political society has caused pressures to rise for residential houselots. The few landowners have made some of their lands available for development into residential lots. However, their efforts have not relieved these pressures, since their practice has been to lease, rather than sell in fee simple, the lots developed on their lands.

Owning property, especially real property on which one lives, together with all of its legal and equitable

rights, is an American dream. This desire for fee simple property has caused the pressures for residential fee simple houselots to become extremely acute. In the next twenty years, if the large landowners continue to permit the development of their lands into only leasehold residential lots, the leasehold residential lots will far outnumber the fee simple residential lots.

Effects of Leases

One of the principal rules of economics is that prices are governed by the supply and demand for goods. The scarcity of fee simple residential lots has thus led to an inflation in the prices for fee simple residential lots, and this in turn has caused the prices for leasehold lots to increase as well.

A corollary to the rule that prices are governed by the supply and demand for goods is that as prices increase, the supply will correspondingly increase to meet the demand. In the case of residential fee simple lands in Hawaii, however, this principle has failed to operate. The reason for this is the hesitancy on the part of the few landowners to sell in fee the residential lots developed on their lands. Their hesitancy stems from two factors.

First, it is said that the instruments which created the estates and trusts, which are among the few, large, landowners, restrict sales of the lands held by the estates and trusts. The instruments were drawn many years ago, when the conditions which exist in Hawaii today were perhaps neither foreseeable nor anticipated. Second, charitable trusts enjoy tax-exempt status under the Internal Revenue Code, and the other nontax-exempt land-

owners are permitted to treat gains derived from sales of parcels of their real property as capital gains, if the sales are casual and limited in number. Sales of residential lots in fee simple in great numbers would cause the gains derived from such sales to be taxed as ordinary income, as to both tax-exempt and nontax-exempt landowners. The value of the lands held by the landowners has increased greatly since they were first acquired by the landowners many years ago. Thus, it is feared that taxation at the ordinary income rates would subject the landowners to large income tax liabilities.

The retention of ownership of lands by the large landowners, their practice of leasing the residential lots developed on their lands, the resultant failure of the supply to catch up with the demand for fee simple residential lots, and the high cost of land have affected not only the residential market but also the cost of other goods consumed by the people of Hawaii. Thus, it is clear that the social and political well-being of the people of the State. This situation is inimical to the public health, welfare and happiness of our people.

Nature of Leases

There are, indeed, those who would prefer to purchase leasehold residential lots for one reason or another. However, the scarcity of fee simple residential lots is an extremely limiting factor in the choice of the people to choose between fee simple lots and leasehold lots. As a result, the landowners who lease the residential lots developed on their lands have been able to include in the leases, provisions which are often financially disadvantageous to the lessees, restrict the freedom of lessees to

enjoy fully their leasehold estates, and are weighted heavily in favor of the landlord as against the lessees.

An example of this is the provision in leases calling for periodic renegotiation of rentals. While lease rentals may be low during the first twenty years of the lease term (sometimes because of the heavy premium which the lessees are required to pay on initial purchase), the lease rentals in future renegotiations have the tendency to rise many times above the rentals of the first twenty years. This rise occurs, because future lease rentals are usually based on the then market value of the land, and the market value of land in Hawaii has consistently risen. Under present trends, the market value of land in Hawaii will continue to rise in the foreseeable future.

Then, too, lessees often purchase leasehold estates in the hopes of improving their financial capabilities in future years to enable them to purchase fee simple residential lots, but the shortage of fee simple lots, and the rising prices for residential lots, have the tendency to cause the purchase of fee simple lots to be postponed and the lessees to be strapped to leases which become more and more undesirable as the lease terms run.

Legislation is necessary for the protection of lessees. The ability of the lessees to enjoy fully their leasehold estates and the enactment of legislation designed to promote this full enjoyment are indeed in the public interest, welfare, security and happiness of Hawaii's citizens. (Exh. 121)

45. The House Standing Committee Report No. 827 on Senate Bill No. 1128 states in part:

The preference of fee simple ownership over leaseholds has been demonstrated in different areas and particularly in recent times:

(a) At a hearing on this bill, a representative of Chaminade College of Honolulu testified that over a year ago the College canvassed all 238 families in Chaminade Terrace when it was studying the possibility of moving Chaminade College to a new campus. Each family was asked if it would want to purchase its lot in fee simple if the decision to move was made. Of the 161 families who responded in time for their decision to be taken into account, 64% wanted to possess their lot in fee simple; 27% said they might want to buy; 2% said it was unlikely that they would want to buy; and 7% indicated that they would not buy, but preferred to continue the lease. A fair estimate of these results would be that about 80% preferred to buy and 20% preferred to continue the lease arrangement, even though the possibility to buy was offered them.

(b) Recently, the Halawa Hills Corporation was organized for the purpose of purchasing from the Bishop Estate the fee of the residential lots covered by 237 leases in the first increment of the Halawa Hills Estates subdivision and reselling the fee to the lessees of the respective lots. As of this date, 71% of the 237 lessees have made firm commitments, evidenced by deposits, to buy the fee. It is reasonably expected that many of the 29% not presently committed will decide to buy after this rather novel experiment of arranging for the pur-

chase of the fee through a community corporation shall have been finalized and closed.

(c) Other instances where the fee was sold to the lessee as in the early increments of the Pacific Palisades subdivision, or where the fee is being made available to the lessee as in portions of the Aina Haina subdivision, also serve to illustrate the need and desire for fee ownership. The Pacific Palisades and Aina Haina instances involve developers who have "sandwiched" positions between the large landowner-lessor and the buyer-lessee and stand to realize a profit. Notwithstanding the added cost of the profit to the developer, substantially all of the lessees have purchased fee interests in their leasehold lots in the early increments of the Pacific Palisades subdivision.

Owning property, especially real property on which one lives, together with all of its legal and equitable rights, is an American dream. Consistent with the promotion of the public welfare through the attainment of fee simple ownership of residential lots by the greatest number of people, the federal government has for many years made available the Veterans Administration home loan guarantee and Federal Housing Administration insurance programs to enable the masses to buy that dream. This desire for fee simple property has caused the pressures for residential fee simple houselots to become extremely acute. In the next twenty years, if the large landowners continue to permit the development of their lands into only leasehold residential lots, the leasehold residential lots will far outnumber the fee simple residential lots. (Exh. 121)

46. On June 2, 1975, Act 184, "Relating to Residential Leasehold," (Senate Bill No. 1200) was enacted, amending Act 307. Its findings and purpose are cited in Findings of Fact No. 6. (Exh. 150)

47. Also enacted on June 2, 1975 was Act 186, "Relating to Residential Leaseholds and the Acquisition by the State Through Condemnation of Lands in Fee Simple and The Disposition Thereof" (Senate Bill No. 1543). This amended Act 307 to include in the text of the statute itself, Legislative findings and declarations of necessity and purpose as cited in Findings of Fact No. 5. (Exh. 151)

48. Also enacted on June 2, 1975, was Act 185, "Relating to the Hawaii Lease Rent Renegotiation Relief Act" (House Bill No. 55a). This act, which placed a ceiling on the maximum amount of lease rent a lessor of a long term residential lease could charge at the renegotiation stage of the lease (Exh. 149), was part of the Land Reform Act package and represented another attempt by the Legislature to address problems created by the residential leasehold system of land tenure. (See Finding of Fact Nos. 6 and 7)

49. Among those giving input to the Legislature on Act 186 was the Department of Social Services and Housing.

50. Senate Standing Committee Report No. 233 on Act 186 states in part:

> The purpose of this Bill is to reaffirm and reiterate the findings and declarations of necessity originally set forth in adoption of Act 307, Session Laws of Hawaii 1967, regarding the monopolistic tendency pervading the pattern of land ownership and disposition which was inimi-

cal to the public health, and to amplify and clarify those findings and declarations of necessity in view of the increasing detriment such tendency will impose on the public if left unchecked. (Exh. 146)

51. Legislative hearings on Act 184 were held on March 27, 1975. (Exh. 143) Among those testifying to the Legislature on Act 184 were the Department of Social Services and Housing; the Alii Shores Community Association (Exh. 140); Bishop Estate (Exh. 143); Crown Terrace Community Association (Exh. 143); the Estate of Harold K. L. Castle (Exh. 143);

52. Senate Conference Committee Report No. 24 on Act 184 states in part:

A. The findings and purposes of Act 307, Session Laws of Hawaii 1967, have been reaffirmed and modified to accentuate the importance of land to the lives of all residents of the State. The need for well-planned State action under its police power to accomplish a series of public purposes necessitated by increasingly difficult conditions arising from the leasehold system of land tenancy, and the importance of broadening the opportunity to acquire fee simple ownership in the State have been further specified. (Exh. 145)

53. Legislative hearings on Act 185 were held on February 21, 1975. (Exh. 139) Among those testifying to the Legislature on Act 185 was the Kaneohe Ranch (Exh. 143).

54. The House Standing Committee Report No. 501 on Act 185 states in part:

The purpose of this Bill are to correct several unconscionable features of current residential lease rent rene-

gotiation, and to properly and fairly establish the values inhering to the lessor and lessee.

Your Committee has found, because of the shortage of residential lands and the rapid appreciation in the value of such land, rents charged the lessee of residential leaseholds have increased greatly and all indications suggest even greater increases in the future. These rent increases, although reflecting the increases in value of the land under the lease, do not properly assign values to that party which paid for that value.

Residential improvements whether situated on fee simple or leasehold land, are essentially the same terms of price to the purchaser. The difference, however, is that the fee simple owner pays for these improvements once and for all, while the purchaser of improvements on leasehold land is often required to pay a premium for improvements at the outset and then pay, upon renegotiation, lease rent calculated upon the fair market value of the land as enhanced by the improvements already paid for, thus paying many times for the value which has been paid for at the time of purchase. (Exh. 144)

55. Senate Standing Committee Report No. 892 on Act 185 states in part:

The existing monopolistic land structure in the State inequitably favor the lessor over the lessee. One such inequality allows lessors to charge lease rents based not only on the raw value of the property but also on improvements on the property paid for by the lessee and on the value accruing thereon. The end result is that the lessee pays for an investment made by himself. This bill alleviates this problem by establishing guidelines, and

procedures in renegotiation which did not exist previously. These procedures act as a protection for the lessees.

Your Committee finds that this type of legislation is long overdue and is to the benefit of all the people of the State. (Exh. 144)

56. Senate Conference Committee Report No. 25 on Act 185 states in part:

Your Committee on Housing has found, through numerous witnesses testifying during the course of the legislative session and through other sources, that renegotiated residential lease rentals have increased to such extreme levels such that the public health, safety and welfare of the people of Hawaii are severely and substantially affected and threatened, resulting in immediate, continuous, and irreparable harm. These effects have been brought about by the fact that leasehold residential developments have dominated the housing market on Oahu from the 1950's. This has compelled thousands of people in the State to accept, without any meaningful choice, leasehold residences to satisfy their housing needs, and this trend is likely to continue unabated in view of the limited availability of land for residential purposes. The initial lease rents charged the residents of leasehold property were low and within the range which the public could afford. However, in recent years renegotiation of rents have increased tremendously and have been unconscionably imposed upon these lessees by the lessors.

The lessees are seriously affected by the unequal bargaining power between themselves and the lessors who

bargain in a context of a market place which is less than free. In instances, lessor's terms are peremptorily submitted to the lessee in ultimatum form through letters rather than through any actual bargaining process. This unequal bargaining relationship exists today despite the rights granted to lessees under Part III of Act 307, passed some seven years ago. The unequal bargaining power is mainly due to the oligopolistic land ownership in this State. This oligopolistic market has contributed to the lack of competitive bargaining and has foreclosed a free market.

The legislative findings contained in this bill set forth these reasons and others in declaring an emergency in order to protect the public health, safety and welfare of the people of Hawaii. (Exh. 144)

III. Information Before the Legislature in 1967 and 1975

57. The Legislature, in enacting Act 307 in 1967, Act 184 in 1975, and Act 186 in 1975, had sufficient information before it and available to it, and this Court finds that (1) the enactment of the foregoing acts; (2) the acts themselves; and (3) the declarations of necessity, purpose and legislative findings all are reasonable, and have a rational basis.

58. Copies of all reports, papers and other documents published by the Department of Planning and Economic Development ("DPED"), State of Hawaii were, pursuant to department policy, sent to the Governor, Lt. Governor, to all agencies required by law to receive them, the Legislative Reference Bureau, the state archives and to the state legislature and to each individual legislator. (Downs: 6/1/83)

59. Some of the documents published by the Department of Planning and Economic Development in evidence in this trial which were sent to the legislature are *Public Land Lease Policies 31 States and Hawaii*, Economic Planning and Coordination Authority ("EPCA") Staff Report No. 10 (1956) (Exh. 154); *An Inventory of Available Information on Land Use in Hawaii*, Vol. I EPCA (1957) (Exh. 1955); *Major Landholdings In Hawaii, Ownership Patterns And Leasing Policies*, EPCA Staff Report No. 14, (1957) (Exh. 157); *An Inventory of Available Information on Land Use in Hawaii*, Vol. 2, EPCA (1957) (Exh. 158); *Land Use Districts For the State of Hawaii*, DPED (1963) (Exh. 167); *The State of Hawaii Data Books*, DPED (1967) (Exh. 175); *Governor's Statewide Conference on Housing*, DPED (1970) (Exh. 183); *Housing In Hawaii: Problems, Needs and Plans*, DPED (1971) (Exh. 185); *Central Oahu Planning Study*, DPED (1973) (Exh. 191); *The State of Hawaii Data Book*, DPED (1975) (Exh. 202); *Housing For Hawaii's People*, DPED (Exh. 205); *Housing For Hawaii's People, Technical Appendix*, (1977) (Exh. 206); *The Housing Need Group on Oahu Housing Follow-up Study No. 1*, DPED (1978) (Exh. 208); *State of Hawaii Data Book*, DPED (1981) (Exh. 217).

60. Hanako Kobayashi has been research librarian at the Legislative Reference Bureau ("LRB") for the past 23 years. The research staff at the LRB is an arm of the State Legislature and is connected with the drafting and research of bills. As a matter of policy, publications produced by the LRB are distributed widely, primarily to all legislators, the Governor, Lt. Governor, the executive departments, the Judiciary, and various local and mainland libraries. And, as testified by Ms. Kobayashi, all publica-

tions of the LRB since 1959 have been distributed to the individual legislators and are also held in the LRB library where they are readily accessible to the legislators. (Kobayashi: 6/1/83)

61. Some of publications of the LRB in evidence in this trial and which were sent to the legislature and kept in the library where they were available to or before the Legislators were *A Study of Large Landowners in Hawaii*, Clinton Tanimura, Robert Kamins, LRB Report No. 2 (1957) (Exh. 156); *Public Land Policies of the United States and the Mainland States*, Charles Javes, LRB (1961) (Exh. 163); *Major Landholdings in Hawaii Data On Land Ownership and Land Use*, LRB Request No. 7969 (1961) (Exh. 164); *Public Land Policy In Hawaii*, Robert Horwitz, LRB Report No. 2 (1964) (Exh. 171); *Public Land Policy In Hawaii: Land Reserved For Public Use*, LRB Report No. 2 (1966) (Exh. 172); *Public Land Policy in Hawaii: Major Landowners*, Robert Horwitz, LRB Report No. 3 (1967) (Exh. 1976).

62. The Land Study Bureau ("LSB") was initially created by the Legislature in 1955 specifically to study the question of the impact of land ownership patterns on the use of the land resources of the state and to study the residential leasehold problem. (Bell: 6/1/83)

63. The following reports were before the Legislature and/or were used by Mr. Donald Bell, while a consultant to the territorial and state legislature from 1951 to the mid-1960's, and to the Lands Committee from 1965 to 1966: *Land Study Bureau (Technical Paper No. 1) Hawaii's Fu-*

ture Population, Gilbert Wong, Land Study Bureau (1959) (Exh. 161); *Land Use On The Six Major Islands of Hawaii*, Land Study Bureau Report No. 3 (1960) (Exh. 1962); *Urban Development on Oahu*, 1946-1962, Louis Vargha, Land Study Bureau (1964) Ex. 165 A,); *Detailed Land Classification—Island of Oahu*, Larry A. Nelson, Land Study Bureau Bulletin No. 3 (Exh. 166); *Residential leasehold Subdivisions, Island of Oahu*, Louis A. Vargha, Land Study Bureau Report No. 7 (1963) (Exh. 168 A, B, C); *Economic View of Leasehold and Fee Simple Tenure Residential Land in Hawaii*, Louis A. Vargha, Land Study Bureau Bulletin No. 4 (196) (Exh. 169 A, B); *Urban Land Development on Oahu 1962-1963*, Louis A. Vargha, Land Study Bureau Report No. 1 (1964) (Exh. 170 A, B). (Bell: 6/1/83) (See also Appendix "A" attached hereto.)

IV. Bases for the Legislative Findings Expressed in Act 307, Act 184, and Act 186.

64. In 1967, in Section 1 of Act 307, and again in 1975, in Section 1 of Act 184; and in Sections 1 and 2 of Act 186, the legislature made certain findings upon which the Land Reform Act is predicated which are provided in Finding of Fact no. 5. Given the documentary support for these findings, some of which was available to the legislature in 1967 and in 1975, and the evidence presented in the case, those legislative findings are reasonable, rationally based and substantially correct and are reaffirmed in their current context.

A. Rapid Urban Development

65. The legislature found in Act 307 that the demand for single family residences had increased sharply, es-

pecially in the rapidly developing urban areas of the State. Much of the land in this rapidly developing urban area was owned by a few private landowners. See Act 307, Sections 1(b), 1(c) and 1(h).)

66. The State was in a stage of rapid urban growth during the period that led up to this legislation as demonstrated by the rapid expansion of the State's economic activity and the population of the counties in the State. The area from downtown Honolulu out to Hawaii Kai, the Kaneohe-Kailua area, and the areas around Pearl Harbor can be termed an "urban corridor." (Hillendahl: testimony on 5/24-26/83)

67. A report available to the legislature supports this finding of rapid urban development, "Major Land Holdings in Hawaii", EPCA Staff Report No. 14 (1957) (Exh. 157) which states in part:

> The Island of Oahu is currently experiencing the pains of a growing population and the resulting pressures on its limited land resources. Oahu already has a density of population greater than Japan or the United Kingdom. Land costs have soared all but pricing out many would-be industrial enterprises and causing the cost of residential lots to climb much higher than the mainland average.
>
> Almost 29 per cent of the total land area on Oahu is controlled by government while 49 per cent is held by private owners of 5,000 or more acres.
>
> • • •
>
> Government and the 60 largest landowners control about 88% all land in Hawaii. It is evident if these

relatively few owners wish to retain title to their land a system of land tenancy ensues.

Land Ownership

The pressure of a growing population on limited land resources is being felt most severely on Oahu.

B. Concentration of Landownership

68. The legislature found that landownership in Hawaii is concentrated in the hands of a few. This finding was made in 1967 (Act 307) and again in 1975 (Act 184 and Act 186). (See Act 307, Section 1(c); Act 184, Section 1(a) and Act 186 Section 1(a)(1).)

69. Statistical evidence on land ownership on Oahu supports the finding of concentration of landownership and shows that the major private landowners (those who own more than one percent of the land on Oahu) own over one-half of the land on Oahu and account for the ownership of over 80 percent of the privately owned land. The Bishop Estate is the largest private landowner accounting for the ownership of 15 percent of all land on Oahu. (Hillendahl: 5/24-26/83) The profile of landownership on Oahu as of 1978 is as follows:

Owner	Acres (Acres)	Share of Total: Land on Oahu (Acres)	Share of Total: Private Land (Percentage)
Federal Gov.	50,634	13.6	—
States & County Gov.	73,081	19.6	—
Total Gov.	123,715	33.2	—
Major Private Landowners	199,761	53.5	80.1
Bishop Estate	(56,513)	(15.1)	(22.7)
Small Landowners	49,740	13.3	13.9
Total Private Land	249,501	66.8	100.0

(Exh. L-104)

70. In 1964, the six major landowners' holdings accounted for over 45 percent of the land owned on Oahu and were profiled as follows:

MAJOR PRIVATE LANDOWNERS: OAHU
1964

Name of Owner	Acres Owned In Fee Simple	Fee Acres as Percentage of Total Acreage of Island	Cumulative Percentage
Bernice P. Bishop Estate	59,007.10	15.50	15.50
James Campbell Estate	50,260.00	13.20	28.70
Castle & Cooke, Inc.	42,398.65	11.13	39.83
Harold K. L. Castle (Kaneohe Ranch)	9,336.87	2.45	42.28
Zion Securities Corp.	6,374.00	1.67	43.95
McCandless Heirs (Elizabeth Marks, et al.)	6,286.00	1.65	45.60

(Exh. L-104)

71. The profile of the lands owned by the Bishop Estate in Hawaii breaks down as follows:

	Bishop Estate (Acres)	Total Land (Acres)	Share Bishop/ Total Land (Percentage)
State on the Whole:			
Share of State Total	341,749	4,045,511	8.45
Share of Private Land	341,749	2,340,821	14.59
Oahu:			
Share of Oahu Total	56,513	373,216	15.1
Share of Private Land	56,513	249,501	22.7
Share of Single Family Residential Use	4,881	24,908	19.6
Share of Hotel, Apartment and Resort Use	555	2,455	18.5
Share of Land Classed Unimproved Residentail	2,594	10,640	24.4

(Exh. L.-10)

72. Further, as graphically established on maps attached to the Land Study Bureau Reports of 1963 and 1974, which show land ownership and projected urban

development on Oahu, the urban lands surrounding Honolulu, then projected as future residential areas, were almost all owned by the major private land owners. (Exh. 168a, b, c, 169a, b, 170a, b, L-4, L-104)

73. Reports before the legislature in 1967 support the legislature's findings on the concentration of land ownership. *Public Land Policy In Hawaii: Major Land Owners,* LRB Report No. 3 (1967) (Exh. 164) states, "Land ownership in the State of Hawaii remain, as it has been since the time of Kamehameha I, highly concentrated." Additionally, in *Major Landholdings in Hawaii, Ownership Patterns and Leasing Policies,* EPCA Staff Report No. 14 (1957) (Exh. 157), one finds the following:

page 3:

"1. The general practice of land tenancy in Hawaii stems to a great exten from the land ownership pattern. Hawaii's land picture is characterized by large landowners which control the great part of total land area. Federal, Territorial, and County Governments control some 42 per cent and the 60 largest landholders about 46 per cent of all land in the Territory. If the large land owners wish to retain title to their land, as they have for the most part in the past, and they do not utilize all the land themselves, then a system of land tenancy results."

page 5:

"Private Lands:

The 12 largest landowners in the Territory control 30 per cent of the total land and 52 per cent of all private

lands. The 60 largest owners control 46 per cent of all land and 80.29 per cent of private land. Only 11 per cent of all land is held by owners with less than 5,000 acres."

74. This concentration of landownership gives rise to potential monopolistic practices on Oahu by those few landowners. These monopoly powers can be exerted (a) in the initial development of residential houses by the number and type of houses relased on the market; (b) when lease rents are renegotiated; and (c) when the leasehold is converted from lease to fee. (Mak: 5/31-6/1/83)

C. Policy of Leasing Rather Than Selling

75. The legislature found in 1967 and 1975 that these large landowners followed a policy of developing the residential lands in leasehold rather than selling in fee simple. (See 307, Sections 1(e) and (h); Act 184, Section 1(B) and Act 186, Section 1(a)(1).)

76. Statistical evidence supports the above finding that these large landowners lease rather than sell the land in residential areas. From 1946 to 1963 the percentage of leasehold residential lots subdivided in Honolulu increased to such an extent that by 1963, 81.6 percent of lots developed in the urban corridor areas were leasehold and 18.4 percent, fee simple. On the entire island of Oahu, 71.1 percent of the residential lots were developed in leasehold and 28.9 percent in fee simple. (TR. Vol. XXXIII, p. 114-116, Exh. L-104). Additionally, statistics show that from 1961 to 1974, 96.6 percent of the tract houses sold in the area from Kaimuki to Koko Head were leasehold, (Exh. 104) and, from 1975 to 1980 that percentage increased to

99.4 percent. Further, the net reduction in the total acreage of land owned by the major land owners from 1950 to 1964, and more specifically the largest landowners, the Bishop Estate, Campbell Estate and Castle Estates, was less than 10 percent. (Exh. L-104) (Hillendahl: 5/24-26/83)

77. Statistical evidence supporting the finding that residential development was occurring primarily as leasehold was available and before the legislature in *An Economic View of Leasehold And Fee Simple Tenure Of Residential Land In Hawaii*, LSB Bulletin No. 4 (1964) (Exh. 169a, b). Further support for this finding can be found in *Major Landholdings In Hawaii*, Legislative Reference Bureau (1961)(Exh. 14) which states: "Houselots: From 1950 to 1960 . . . [o]n Oahu, about four-fifths of the lots were leased (4,156 out of 5,227) . . ."

D. Shortage of Fee Simple Residential Property

78. The legislature found in 1967 and 1975 that the concentration of landownership in the hands of a few combined with the practice of those landowners to lease rather than to sell in fee simple and the growth in population and the increased demand for residential lots has led to a serious shortage of residential fee simple property at affordable prices in the urban areas. (See Act 307, Section 1(f); Act 184, Section 1(c); and Act 186 Section 1(a)(2).) (Also, Hillendahl: 5/24/83-5/20/83)

79. Because the government has zoned an adequate amount of land residential, restrictive government zoning cannot be said to be the sole cause of the shortage of residential fee simple land available for development. (Exh. L-10) (Hillendahl: 5/24-26/83)

80. *Housing in Hawaii: Problems, needs and Plans,* Marshall Kaplan, Gans, Kahn and Yamamoto, DPED (1971) (Exh. 185) states in part:

> "While there is certainly no scarcity of land per se in Hawaii its availability for housing is limited by a combination of factors involving location, concentration of ownership, and state and local land use and improvement policies."

(Tr. Vol. XXXIII, p. 13)

In *An Economic View of Leasehold and Fee Simple Tenure of Residential Land In Hawaii,* Louis A. Vargha, L.S.B. Bulletin No. 4 (1964) (Exh. 169a) states in part:

> "It is apparent that leasehold lots as a proportion of total subdivision has increased tremendously and if the current trend continues, virtually all housing in newly developed areas will only be available with leasehold land tenure."

(Tr. Vol. XXXIII, p. 139)

81. The two reports cited above were before the legislature for their consideration when this legislative finding on the shortage offer simple residential property was made.

E. Lack of Choice To Own or Lease

82. The legislature found in 1967 and 1975 that because of a combination of the concentration of land ownership in the hands of a few, the practice of those landowners to lease rather than sell the residential developments, and the demand for residential lots, people of the State who wished to reside in the developing urban areas have been deprived of a choice of whether to own or lease the land on which

their homes are situated. (See Act 307, Section 1(f) and Act 186, Section 1(a)(3).)

83. Statistical evidence shows there is relatively little difference between the price of a comparable leasehold house versus fee simple house. In fact, in 1974, 1976 and 1978, the median price of homes on leasehold land exceeded those on fee simple land. The purported economic advantage to the homeowner of leasing instead of purchasing his property does not exist. Therefore, because most homes in the urban area have been recently developed are leasehold, the homebuyer has had relatively little choice of whether to lease or buy in fee simple. (Hilliendahl: 5/24-26/83)

84. *An Economic View of Leasehold and Fee Simple Tenure of Residential Land in Hawaii,* Louis A. Vargha, L.S.B. Bulletin No. 4 (1964) (Exh. 169a) states:

> The direction of urban growth on Oahu indicates that most of the single family residential development during the next decade will be on land whose owners have previously made land available almost exclusively on a leasehold basis. This supports the contention that the trend toward a higher proportion of leasehold development will continue.
>
> *In the future, it would appear that most individuals seeking new homes on Oahu will have little choice in land tenure, except at locations less convenient to activities in Honolulu.* (Emphasis added.)

Further, *Report To The People,* Technical Report No. 2, (1975) prepared by Marshall Kaplan, Gans, Kahn and Yamamoto, for the State Land Use Commission (Exh. 199), states: ". . . for all major landholders, less-than-fee

approaches to land sales tend to [the] . . . maintenance of a monopolistic or oligopolistic status in the land market."

Additionally, in *Housing Costs in Hawaii*, Report To The Legislature of the State of Hawaii (1969) (Exh. 197) states:

> "Open competition in the sale of housing, where most families can be potential buyers and have a wide range of types of houses, locations and a prices within their reach, is not likely to occur in Honolulu *where land and its ownership* is limited and the construction industry depends on long supply lines and relatively few suppliers." (Emphasis added.)

F. Inflation of Residential Land Values

85. The legislature found in 1967 and in 1975 that the shortage of fee simple residential property and the restriction of choice between fee simple and leasehold have caused the prices for both leasehold and fee simple residential land to be inflated. (See Act 307, Section 1(g); Act 184, Section (1)(d); and Act 184, Section 1(a)(2).)

86. The leasehold system in Hawaii has contributed to the inflation of residential land values. (Hillendahl: 5/24-26/83)

87. The limited supply of any kind of land in this island economy is a factor in the high cost of land in Hawaii. From 1960 to 1971, the price of property in Hawaii doubled, increasing at a rate of 6 percent per year compared to a nation-wide increase of 4.5 percent over the same period. The problem of high land costs is aggravated by the shortage of fee simple land and the demand for it by a growing population which must have housing. This scar-

city makes fee simple land very expensive and the high price of fee simple land adversely affects the price of leasehold property causing it to increase. The evidence shows that the prices of fee property and leasehold property are at least comparable and rise together. Leasehold property prices are furthermore kept high by the practice of incremental development as described in Finding of Fact No. 138. (Hillendahl: 5/24-26/83)

88. This principle of supply and demand, and the effect of leasehold residential land prices on it, were also reflected in the Senate Committee report on Senate Bill 1128 (Act 307) which stated in part:

> "One of the principal rules of economics is that prices are governed by the supply and demand for goods. The scarcity of fee simple residential lots has thus led to an inflation in the prices for fee simple residential lots and this, in turn, has caused the prices for leasehold lots to increase as well." (Hillendahl: 5/24-26/83)

89. Reports which were before the legislature which support its finding that there was a resulting inflation of residential land caused by the residential leasehold system include *An Inventory of Available Information on Land Use in Hawaii*, Harold Bartholomew, EPCA (1957) (Exh. 155); *Land and Housing On Oahu*, Land Study Committee of the Honolulu Chamber of Commerce (1959) (Exh. 160); *Urban Development On Oahu, 1946-1962*, Louis A. Vargha, Land Study Bureau (1964) (Exh. 165); *Residential Leasehold Subdivisions Island Of Oahu*, Louis A. Vargha, LSB Report No. 7, (1963) (Exh. 168A, b, c); *An Economic View of Leasehold and Fee Simple Tenure of Residential Land*

In Hawaii, Louis A. Vargha, LSB Bulletin No. 4 (196) (Ed. 169a, b); *Housing Costs In Hawaii,* Report to the Legislature of the State of Hawaii (1969), Submitted by the Interim Committee on Housing (Exh. 177); *Housing In Hawaii: Problems, Needs and Plans,* Marshall Kaplan, Gans, Kahn, and Yamamoto, DPED (1970) (Exh. 185); and *Central Oahu Planning Study:* Technical Supplement 3: A Survey of Vacant Residential Lands Within Honolulu Commutershed (January, 1973) DPED (Exh. 191).

In *An Economic View of Leasehold and Fee Simple Tenure of Residential Land In Hawaii* at page 49, Vargha states: "To the degree that concentration of ownership of land characterizes the urban fringe of Honolulu, the direction of growth can be determined by landowners. *Likewise, concentration of ownership increases price leverage.*" (Emphasis added)

G. Financially Disadvantageous Terms And Restricted Freedom To Enjoy

90. The legislature found in 1967 and in 1975 that the shortage of fee simple residential land, the artificial inflation of land value, and the restriction on people of a real choice between fee simple and leasehold have enabled lessors to include terms in leases which were financially disadvantageous to the lessees and which restricted their freedom to fully enjoy their leasehold estates. (See Act 307, Section 1(g) and Act 186, Section 1(a)(3).)

91. Long term residential leases in Hawaii contain terms which are financially disadvantageous to the lessee: Rents beyond the first fixed-periods are uncertain. The lessee is required to negotiate a rent escalation in the mid-

dle of the lease, when he is captive and has no real bargaining power. Upon the expiration of the lease, the land on which he lives reverts to the landowner.

The problem caused by reversion is demonstrated in Hawaii Kai where some 30 different occupants along the waterfront lost their property through reversion when the lessor refused to provide another lease. Although the lessee may have the option of removing the improvements on the land, houses built of single wall and rock wall on a concrete slab usually cannot be moved.

The lessee who is faced with imminent renegotiation and who decides to sell his home rather than pay the increased lease rents must often sell his property for less than comparable properties, which demonstrates that property values fall for those properties facing imminent renegotiation. The lessee will face further difficulty in selling his home as banks will only finance the purchase of those homes on leased land for which the lease has a specified number of years remaining. If the remaining term of the lease does not meet the bank's requirement, the lessee must obtain an extension on the lease which puts him at the mercy of the lessor who may not grant the extension or may demand higher lease rents for the new fixed term. Indeed, the Bishop Estate froze, for a period of time, the granting of any extensions on leases in Waialae Kahala, causing great difficulty to those lessees who needed the extension in order to sell. (Hillendahl: 5/24-26/83; Tr. Vol. XXXIV, p. 33; and Mak 5/3/83-6/1/83)

92. The leasehold system also gives rise to emotional hardship on the lessee by creating uncertainty as to future lease rents and as to renewal of the lease upon expiration.

93. The financial disadvantage of buying leasehold also affects people other than the lessees. The evidence shows that (a) the median price of leasehold houses exceeded the median price of fee simple homes in 1974, 1976 and 1978; and (b) it is the lower income people who prefer and actually do buy fee simple property while the higher income people purchase leasehold. This indicates (a) leasehold really does not provide less expensive housing for the people of the State; (b) the lower income group, who can afford to buy a home and are faced with a choice of buying leasehold or renting, do not rent but buy smaller fee simple homes; and (c) the lower income group, who more strongly prefer fee simple housing, therefore, are more adversely affected by the leasehold system which has caused fee simple prices to rise. (Mak: 5/31-6/1/83)

94. Long-term residential leases restrict the lessees' freedom to fully enjoy their leasehold estates. Lease terms require the lessee to submit to inspections at the lessor's request and to apply to the lessor for authorization for various improvements and changes a lessee may wish to make on the property. (Hillendahl: 5/24-26/83) Although restrictive covenants in the lease may have been included to prevent unsightliness or activities detrimental to the neighborhood community, many of these restrictive covenants are not always enforced. (Ikeda: 5/19/83)

95. Reports before the legislature at the time this finding on financially disadvantageous terms was made support this finding. In *An Economic View of Leasehold and Fee Simple Tenure of Residential Land in Hawaii*, Vargha states:

For similar housing, it is unlikely, under existing leasehold arrangements, that leasehold tenure creates any investment advantages for a family.

• • •

Only in the initial period of a lease, when leasehold property rights may apprecite in value, is there any basis for expecting a financial advantage which could accrue to leasehold tenure. In specific cases the rate of appreciation of leasehold property values could exceed that for fee simple values.

In the latter stages of the leasehold, the situation is biased against leasehold have ownership with the value of leasehold property rights decreasing in the period when annual ground rents could be expected to increase. (Exh. 169a)

96. *Housing Costs In Hawaii,* Report to the Legislature of the State of Hawaii (1969) (Exh. 177), states that the lessee homebuyer must pay for the offsite improvement costs even though he does not obtain the benefit he would receive if he were a fee homebuyer.

Housing In Hawaii: Problems, Needs and Plans, Marshall Kaplan, et al. (1971) (Exh. 185), states:

"Further, the buyer of a home on leased land apparently does not pay proportionately less than on fee simple, even though he gains no equity in the land. A number of costs other than raw land value are apparently being passed on in the sales price to the leasehold home buyer."

97. Also included in the above report by Louis A. Vargha, is support for the legislative finding on the restric-

tion to fully enjoy the leasehold estate. That report refers to the limitations as to the length of time a lessee holds the leasehold and the disposition of the improvements upon termination of the lease. The report states in part:

> Thus, a lessee buys leasehold rights much as one buys fee simple rights. The major difference between fee and leasehold rights is that the leasehold rights are not "perpetual" as are fee simple rights.
>
> • • •
>
> The important limitation of leasehold rights are found in the area of voluntary restrictions—that is the restrictive covenants of the lease to which the lessee voluntarily commits himself.
>
> . . . the specific covenants of a lease detail the distinctions between leasehold and fee simple rights, aside from the immediate difference from fee simple rights common to all leaseholds—duration. Thus, specific covenants of lease agreements can have important bearing upon the economic effects of leasehold land tenure.
>
> • • •
>
> The lessee is responsible for protecting the landowner's interests in the site.
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> • • •
>
> Lease agreements delineate the landowner's right to enter the property and to determine whether his interests are being protected.
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> • • •
>
> In addition, potential limitations of a lessee's freedom of action are commonly found in lease provisions stip-

ulating that the land owner must approve the sale of the property (including the leasehold right).

• • •

Such restrictions may also affect the ability of the lessee to rent his house and, perhaps more importantly to many lessees, may also affect the lessee's ability to devise his property.

(Exh. 169a)

H. Economic Effects of Lease Rent Renegotiation

98. In 1975, the legislature found that residential leasehold land tenure has and will continue to have undesireable economic effects as lease rents are increased 400 to 1000 percent upon renegotiation. (See Act 184, Section 1(D) 4-7 and Section 1(E).)

99. The lessee faced with renegotiating his lease rent for a new fixed term is in a greatly disadvantaged position with respect to the large landowners-lessor. The lessor, under the terms of the lease, is not restricted in the amount of lease rent he can charge at the renegotiation stage. Although Chapter 519, Hawaii Revised Statutes, limits the renegotiated lease rent to 4 percent of the fair market value of the land, the resulting rent is still a dramatic increase for the lessee. The lessor is under no obligation to sell the fee title, and is under no obligation to renew the lease. The lessee is faced with a situation where his home, often his single largest investment, is situated on land owned by someone else.

100. The Bishop Estate, through its representative Paul Cathcart, stated that it is now basing its new renegotiated lease rents for Hawaii Kai on an appraised valuation of up

to $20 per square foot. Thus, a family with a 10,000 square foot lot appraised at $20 per square foot, would be required to pay $8,000 per year in lease rent alone. If that family had an income of $30,000 per year (in 1980 approximately 29 percent of the families in Hawaii Kai had a household income totaling less than $30,000 per year), it would spend 26.7 percent of its income just on lease rent. When other housing costs such as mortgage payments, insurance and other direct housing expenses are considered, these families would be spending far more for housing than the 25 percent of household income traditionally considered reasonable by the FHA, the VA, and banks and lending institutions. (Hillendahl: 5/24-26/83)

101. If lease rents are renegotiated at the Bishop Estate's projected valuation of $20 per square foot, or $4,800 per year for a lot of 6,000 square feet, a Kamiloiki lessee could be paying in addition to his other housing costs, $400 per month for lease rent. (Hillendahl: 5/24-26/83)

102. The impact of increased lease rents results in even greater hardship on retired people. A retired person's income is generally equal to 40 percent of his income as a worker. Retirees in Hawaii Kai whose rents are renegotiated at the Bishop Estate's announced $20-per-square-foot valuation, and whose income is $22,000 per year or less, will be spending from 27 to 55 percent of their income on lease rent alone if their lots measure 6,000 square feet, and between 44 and 91 percent of their income on lease rent if their lots measure 10,000 square feet. (Hillendahl: 5/24-26/83)

103. Jacob S. Jichaku was a Tract A lessee. He first moved into his home in 1956. He was the third owner of the house built in 1951. Tract A, located adjacent to the shopping center in Kahala was one of the first tracts developed in Waialae-Kahala. The lessor-landowner was Bishop Estate. For the first 18 years of the lease the rent was set at $98 per month and for the next seven years, at $300 per year. This would equal the first 25 year fixed term.

104. On December 24, 1975, the Bishop Estate sent to Mr. Jichaku and to other Tract A lessees a letter in which it announced the new lease rent for the next fixed term of the lease. The lease rent demanded of Mr. Jichaku was $3,313 per year for the remaining 30 year fixed period. It also offered the alternative of a new 55 year lease with the lease rent for the first 15 years at $2,950 per year and the next 10 years at $4,430 per year. The Bishop Estate gave Mr. Jichaku and other lessees until January 15, 1976, or less than one month, to respond.

105. On December 31, 1976, the Bishop Estate sued Mr. Jichaku and the other lessees in Tract A claiming Act 185 was unconstitutional and the lease rents demanded were proper.

106. As a result of the demand letters sent to the Tract A lessees and the lawsuit, the leases in the community organized through the Kahala Community Association to discuss what to do about the 1100 percent increase in lease rent. The Tract A lessees had meetings also attended by other lessees of other tracts whose fixed terms of their leases would expire the next year. The Association formed various committees, such as the lease rent committee, fee purchase committee, and a steering committee and named

block captains. During this period, the Tract A lessees continued to pay the old lease rent of $300 per year.

107. From Mr. Jichaku's observations, and the survey conducted by the Community Association, the average age of the Tract A lessee was about 62.

108. After the trial on the complaint was concluded, the Bishop Estate offered it other lessees in Kahala, the opportunity to purchase their lots in fee. The Tract A lessees were forced to file a condemnation action through the HHA under HRS Chapter 516 in order to buy the fee. Mr. Jichaku purchased the fee title to his lot, as did all but one of the Tract A lessees.

109. Sakae N. Komenaka was also a lessee in Tract A since 1964. Her initial lease rent was between $100 and $200 per year. In December, 1975, she received a letter from Bishop Estate demanding increased lease rent of $2,667 per year, the year before she was to retire from her position at the University of Hawaii.

Mrs. Komenaka rented out the main house on the property and moved into a smaller house in the back when she retired and had to live on a fixed income. She could not have been able to pay the increased lease rent, and thought she would have to move off the property and possibly impose on her children by living with them.

Fortunately, her children were willing to help her to buy the fee simple title from Bishop Estate. Although her payments on the fee purchase were more than what her increased lease rent would have been, she was willing to accept her children's contribution towards the purchase of the fee because the property would ultimately be theirs.

110. James A.W. Duncan is a lessee living in the West Marina area of Hawaii Kai, the first development in the Hawaii Kai area owned by the Bishop Estate. Mr. Duncan, a part-Hawaiian, has lived in the area for 12 years and was born and raised in Hawaii.

111. If Mr. Duncan were faced with lease rent of $4,500 per year, which the Bishop Estate has stated they would charge if the lease rents in the area were to be renegotiated today, Mr. Duncan would have to sell his house and move probably to the mainland. The home would be difficult to sell because of the impending high lease rent and the move to the mainland would be unsatisfactory to him as he wants to stay in Hawaii.

112. Mr. Oran D. Spotts, Jr. is a lessee in Ainakoa, an area owned by Bishop Estate on the Kokohead side of Kahala Mall Shopping Center on Kalanianaole Highway. He has lived in his home for about 12 years and was raised in the Ainakoa area. For the next term of the lease, the Bishop Estate has demanded an increase in lease rent as of December 31, 1982, from $300 per year to $5,512 per year for the next 15 years, or $5,580 per year for the next 10 years, with step-ups to $9,770 per year for the second 10 years, and $17,090 per year for the third 10 year period. Mr. Spotts cannot afford this increase and has not paid the new lease rent. He intends to stay on the lot paying the old lease rent until his lessor, the Bishop Estate, evicts him.

I. The Economy of the State

113. The legislature next found in 1975 that the economy of the State was adversely affected by the inflation

of residential land values caused by the leasehold system. (See Act 186, Section 1(a)(4).)

114. The amount of money lost to the state's economy, because of the leasehold system, will increase as rents are renegotiated. No portion of lease rent paid for the lot upon which a taxpayer is domiciled is deductible from his gross income, whereas the portion of payment for a fee simple corresponding to interest due a mortgagee is deductible and reduces the taxpayer's taxible income, resulting in less taxes owed the federal government. Allowing lessees to purchase the fee simple on which their homes are situated would result in the circulation in the local economy of dollars which would otherwise go to the federal government. (Mak: 5/31/83-6/1/83)

115. *Major Landholdings in Hawaii, Ownership Patterns and Leasing Policies*, EPCA Staff Report No. 14 (1957)(Exh. 157), states in part:

> "The general practice of land tenancy in Hawaii has resulted from the fact that government and a limited number of private owners control the greater part of economically exploitable land. *The leasing policies of these major owners have a direct effect on the economic utilization of land and an indirect effect on the prosperity of the community.*" (Emphasis added.)

J. Cost of Living in Hawaii

116. The legislature found in 1975 that the cost of living in Hawaii was and had been high and that a contributing factor to the high cost of living was the high cost of land and that stabilizing or at least slowing the inflation of land values would curb the rising cost of living

and contribute to the welfare of all people of the State by improving their standard of living. (See Act 186, Section 1(a)(6).)

117. The cost of living in Hawaii continues to be high. Contributing to the high cost of living, and therefore adversely affecting many segments of Hawaii's population, is the high cost of land inflated by the leasehold system. (Hillendahl: 5/24-26/83).

K. Quality of Life

118. The legislature in 1975 also made various findings concerning the quality of life in Hawaii as it is affected by the inflationary trend in land and the inflationary total cost of living. The legislature found that such things as basic nutritional and health care, safe and healthy housing and social and economic stability will all be adversely affected by this inflationary cost of living if it remains unchecked. These legislative findings, and as they are more particularly stated in Act 186, Sections 6, 7, 8, 9 and 11, have a rational basis.

119. The legislature's findings and concerns regarding the quality of life are also born out in the area of rent renegotiation. Evidence concerning the Tract A lessees and those in Hawaii Kai, clearly demonstrates that the increased lease rents proposed by Bishop Estate, by taking a larger portion of a family's budget and leaving less for the family's other necessities, will have an impact on the quality of life of that family. The new lease rents will not leave a sufficient amount in the family's budget deemed reasonable enough to pay for other necessary expenses of life. (Hillendahl: 5/24-26/83; Mak: 5/31-6/1/83)

V. The HHA Administers Various Programs Under Its Legislative Mandate

120. The HHA administers a low-rent housing program under H.R.S. Chapter 359 which is the State's equivalent of the federal rental program. This is a month-to-month rental program with rents increasing or decreasing based upon a person's income. (Tr. Vol. III, p. 18)

121. The HHA administers the teacher housing program under H.R.S. Chapter 359G which assists in providing rentals for teachers in rural communities. (Tr. Vol. III, p. 20)

122. The HHA administers the housing program under the Omnibus Housing Act, H.R.S. Chapter 359G. This housing program is all encompassing, including fee simple, leasehold, rental, single family and multi-family housing. (Tr. Vol. III, p. 21.)

123. The HHA administers the housing program which assists displaced persons under H.R.S. Chapter 111. (Tr. Vol. III, p. 21.)

124. The HHA manages a total of over 7,500 housing units funded by the federal and state government. (Exh. 223)

125. The HHA also provides low and moderate income families with rent subsidies through two major programs: the HUD Section 8 Program and the State Supplemental Program. (Exh. 223)

126. The HHA also provides housing finance assistance through its Hula Mae program, which provides low interest

mortgages to the first time homeowner, and through its Construction Loan Note program which provides HHA with an alternative source of below-market interest rate funds to finance the construction of multi-family public housing projects. (Exh. 223)

127. Since 1974, when the first petitions for designation were filed with the HHA by lessee groups, thirty-three development tracts comprised of 6,355 lots have been "converted" to fee simple after petitions had been filed. These conversions were voluntarily negotiated sales between the lessors and lessees. In some cases settlements were reached after Chapter 516 eminent domain complaints had been filed, and in others, after designation for condemnation by the HHA. As of March 28, 1983, the lessees of 52 development tracts had filed petitions with the HHA but no conversion had yet taken place. These 52 development tracts contained 7,186 lots leased to lessees participating in the petition. The number of lots leased by non participating lessees was 8,469 bringing the total number of lots potentially in conversion to 15,655. Therefore, the total number of lots in tracts involved in the land reform program under Chapter 516 as of this writing is 22,010. (Tr. Vol. IV, p. 10-15, Exh. 226a-g, Exh. L-5.)

VI. The Bishop Estate: Land Holdings and Policies

128. The Bishop Estate, the largest single private landowner on Oahu, has been deemed a tax-exempt educational trust by the United States Internal Revenue Service and its sole beneficiary is the Kamehameha Schools. Except for income derived from its wholly owned subsidiaries, the

Kamehameha Investment Corporation and the Royal Hawaiian Shopping Center, the income generated by its landholdings is not subject to tax and is used to administer the Estate and to operate and maintain the Kamehameha Schools.

A. Land Holdings

129. As of July, 1982, the Bishop Estate's land holdings totaled approximately 341,500 acres distributed over the five main Hawaiian islands as follows:

	Acres	Percentage of Total Area
Oahu	56,128	15.04%
Maui	2,526	.54%
Molokai	4,695	2.79%
Hawaii	266,438	10.57%
Kauai	11,725	3.28%

(Exh. T-15)

130. About 2.59 percent of the total land holdings of the Bishop Estate (in acres) produce approximately 89.27 percent of the lease rent income of its land holdings. (Exh. T-15.)

131. The Bishop Estate's residential leasehold land comprises 2.42 percent of the Bishop Estate's total land holdings and produces 25.17 percent of its lease rent income. (Exh. T-15.)

132. The Bishop Estate's commercial land holdings comprise 0.17 percent of the Bishop Estate's total land holdings and produce 64.10 percent of its lease rent income. (Exh. T-15.)

133. Bishop Estate's land is classified and produces income as follows:

Land Classification	Percentage of Bishop Estate's Land	Percentage of Lease Rent Income
Commercial 591 acres	0.17%	64.10%
Residential 8,267 acres	2.42%	25.17%
Agricultural 165,191 acres	48.37%	10.73% (both agricultural and conservation
Conservation 167,463 acres	49.04%	

(Exh. T-15)

134. The tax assessed value of the Bishop Estate's land (including the lessees' interest in the value of land) is $2,316,410,000. (Exh. T-15)

135. The Bishop Estate is the largest private landowner on Oahu. Its 56,513 acres on Oahu constitute 15.1 percent of all land on Oahu and 22.7 percent of all privately held land on Oahu as of 1978. Of the land on Oahu designated for residential use, the Bishop Estate's 4,881 acres constitute 19.6 percent. The Bishop Estate has 2,594 acres, or 24.4 percent of the land classified as unimproved residential on Oahu. (Exh. L-104)

B. Land Policies

1. Incremental Development

136. In the development of its residential lands in the urban corridors of Oahu, the Bishop Estate and its developers used an incremental, or stepwise approach, building only a limited number of units for sale on the market each year over many years.

137. In Heeia, a suburban development in Honolulu County built on Bishop Estate land, the developer mar-

keted only a limited number of housing units in any given year, although he had City and County approval to develop the entire area at one time. (Tr. Vol. XXII, p. 26-30.) (Ex. L-109)

138. Incremental development has been the pattern from 1963 to the present in Pearl Harbor Heights, Halawa Hills, Pearl Ridge, Enchanted Hills, (the Halawa to Waiawa area), all situated on Bishop Estate land in western urban Honolulu and leased and developed by AMFAC-Pearl Harbor Heights Developers (later Lear-Seigler).

139. In Hawaii Kai, an incremental approach has been used since 1963 by the developer of this Bishop Estate land. (Ex. L108)

140. Incremental development takes into account the number of possible buyers for houses and keeps the supply of houses on the market proportionately reduced with the purpose of stabilizing prices and guaranteeing maximum profits to the developer. (Tr. Vol. XXII, p. 54-64) (Ex. L-111)

141. The elimination of the leasehold system, or minimizing its effect, would create a freer market in land, less subject to the monopolistic and oligapolistic powers of the few landowners/developers who control the Honolulu suburban lands so that the price of land is not set by artificial barriers but by the open market.

2. Lease Rents

142. Rental policy for the Bishop Estate leaseholds is established by the Trustees. The Trustees can unilaterally change rent renegotiation policy at any time.

143. Initial lease rents in new subdivisions constructed on Bishop Estate lands are based on "marketability" and other factors determined by the developers and the Trustees to make the homes on the lots saleable and not on the formulas set by the Trustees for extension or renegotiation. New lease rents in new development tracts are based on a return considerably lower than the mortgage interest rates so that the homes thereon will be competitive with fee simple property. However, once the lots are leased and the houses on them sold, the Bishop Estate is no longer constrained in its demand for rent by earlier considerations of marketability. (Exh. L-37)

144. At rent renegotiation, the actual amount of rent charged by the Bishop Estate is a percentage of the appraised value of the individual houselots. Therefore, as the value of the individual lots increases as the lessees improve the property on which they live and the community as a whole, the lease rent increases. The lessees pay for the onsite and offsite improvements, either directly or through taxes. The Bishop Estate, however, which contributes nothing to the appreciation of the lots, except for the raw land, ultimately benefits from the lessees' expenditures in money and effort, through its prerogative to charge higher lease rents based on these improvements.

145. In May 1960, when no significant lot development charge was paid by the lessee, the Trustees adopted the policy of quoting rents for lease extension or renegotiation at 3 percent of the full market value of the improved lot, with no credit to the lessee for offsite improvements or lot development costs actually paid for by the lessee.

146. A chart attached to the Bishop Estate staff report dated January 23, 1968, graphically demonstrated the advantage to the Bishop Estate of requiring the lessee to pay for offsite improvements and lot development costs. The Trustees were later able to charge higher rents based on the appreciation of the lot caused by the offsite and onsite improvements, all of which were paid for by the individual lessee. (Exh. L-36)

147. In 1962, the Trustees adopted a policy giving lessees credit for 75 percent of the remaining fixed rent when they extended or renegotiated their lease rent early. The Bishop Estate staff considered this rental credit an important stimulus to frequent renegotiation of lease rent. Since renegotiation is the most significant factor in increasing revenue for the Trustees, it was important that Bishop Estate encourage early renegotiation of rent.

148. On October 5, 1965, the Trustees for the first time adopted a policy of giving the lessee some credit for offsite improvements and lot development costs, by crediting the lessee with the original cost of such improvements amortized over 55 years.

149. In 1968, the Bishop Estate staff stated in a report to the Trustees that if condemnation action under the Land Reform Act were initiated, it would be important for the Bishop Estate to have the highest possible lease rents in effect. (Exh. L-37)

150. In 1968, the Bishop Estate began to examine its leasing policy with the eventual objection of increasing the income to the Estate. For assistance, the staff conferred with representatives of some of the other large landowners,

the Kaneohe Ranch and the Campbell Estate, and considered their respective policies regarding renegotiation. In a report dated September 19, 1968, the staff recommended that rents quoted on lease extensions or renegotiation be increased from 3 percent to 3.6 percent or to a maximum of 4 percent of the appraised value of the individual house-lots. The staff observed that major changes in the lease rent policy of a major landowner like the Bishop Estate, such as an increase of more than 4 percent, could have serious consequences for the state economy, could disrupt property values, and would arouse public indignation. The staff further concluded that a substantial increase in rents demanded at renegotiation would not only cause a loss in the market value of leasehold properties but would motivate lessees to seek to purchase their residential lots under the Land Reform Act. (Exh. L-37)

151. Despite these recommendations, the Trustees voted at a meeting held on September 24, 1968 to increase the lease rent rate to be quoted on lease extension or renegotiation from 3 percent to 4.28 percent for 30-year fixed rent leases. (Exh. L-37)

152. In 1969, the Trustees commissioned reports from independent consultants regarding their residential leasehold rent policy. Economic Research Associates (hereinafter referred to as "ERA"), a mainland company, submitted a report to the Trustees dated September 10, 1969, which recommended that in of setting renegotiated lease rent, the lessees be given credit for a proportionate share of the appreciated value of the lot based upon the initial ratio of offsite improvements and lot development costs to the unimproved lot value at the inception of the lease.

ERA further recommended that the initial market value of the raw land be used as a base for setting lease rents throughout the duration of the lease. ERA also recommended not using a rate in excess of 4.28 percent in setting lease rents upon renegotiation. (Exh. L-38, 39, 51)

153. In a staff report dated March 12, 1970, the Bishop Estate staff stated that the 4.28 percent return adopted in 1968 was a rather arbitrary figure and recommended to the Trustees that it be rounded down to 4 percent or up to 4.5 percent (Exh. L-39)

154. In that report dated March 12, 1970, the Bishop Estate staff, after careful consideration, developed a proposal which would give the lessee full credit for his lot development costs paid for by him, and for a 2 percent appreciation per year on the cost of those improvements. The staff also recommended a 100 percent rental credit for the remaining fixed rent on leases with a 30-year fixed rent period. In consideration of these two credits to the lessee, the Bishop Estate staff recommended that the annual lease rental rate be rounded up to 4.5 percent. (Exh. L-39)

155. On January 5, 1971, the Trustees rejected the staff recommendations that the lessee be given credit for the cost of offsite improvements and lot development costs paid for by him with appreciation at 2 percent per year and 100 percent rental credit for the remaining fixed term, but increased the annual lease rental rate from 4.28 percent to 4.5 percent. The 4.5 percent rental rate was still the annual rental rate in effect under the Trustees' policy which was challenged in *Midkiff v. Amemiya,* Civil No.

47103, Circuit Court of the First Circuit, State of Hawaii (1978). (Exh. L-45)

156. On July 24, 1973, the Trustees adopted a new policy for lease extensions which provided for a new term of 55 years with rental fixed for the first 25 years; annual rents based on a 4 percent rate for the first 15 years; a a 50 per cent step-up for the following 10 years; and the provision that rent for the next 10 years should not exceed the rent for the fifteenth year of the new lease term, increased in the same proportion as any net increases in the Honolulu Consumer Price Index over the 15-year period. (Exh. L-48)

157. On July 24, 1973, the Trustees adopted a policy requiring lessees to pay $50 to obtain a firm commitment from the Bishop Estate stating the new rent offered for extension of their lease. The quotations did not require any actual appraisals except in special cases and were simply based on computations using a multiplier of tax assessed values. The lessees had to pay the $50 in advance even if they would not accept the rent quoted by Bishop Estate. (Exh. L-48)

158. In the Bishop Estate Staff Report of May 6, 1976, the staff reported that the rapid increase in lease rent had provided considerable public opposition, and even animosity, and, for some retired persons, real hardships had been reported. The staff recommended that it therefore appeared appropriate to quote lower rents in the early years of the lease and then charge greater rent in the later years. (Exh. L-42)

159. In their May 6, 1976 meeting, the Trustees of Bishop Estate voted to (1) immediately suspend quota-

tions of rents for requested extensions of any residential leases until further notice; and (2) instruct the staff to immediately cancel any overdue or outstanding offers for residential lease extensions. (Exh. L-42)

3. Land Sales and Leasing

160. From 1918 to June 23, 1967, a total of 7,518 single family residential leasehold lots were developed on Bishop Estate land from June 24, 1967 to June 1, 1975, 5,734, from June 2, 1975 to the date of this trial, 1,096, for a total of 14,348 leasehold lots developed on Bishop Estate land. (Exh. T-81)

161. From 1910 to 1949, the Bishop Estate sold approximately 328 residential houselots in fee simple to individual buyers. (Exh. T-80)

162. From 1950 to 1966, the Bishop Estate sold approximately 1,048 residential houselots in fee simple to individual buyers (Exh. T-80, L-10)

163. From 1967 to 1975, the Bishop Estate sold only 358 of its 12,591 existing leasehold single family residential properties in fee to its lessees or to someone else. (Exh. T-80, T-81)

164. One of the Bishop Estate's primary objections to the land reform legislation enacted or proposed since 1955 has been the possible adverse tax consequences the Bishop Estate would suffer as a "dealer in real estate" if it were forced to sell its fee simple interest in land in a manner unacceptable to the IRS. This designation would make almost all Bishop Estate income taxable. To maintain its tax exempt status, the Bishop Estate, in 1967, supported

the condemnation approach of Act 307 through which it could avoid classification by the Internal Revenue Service as a dealer in real estate. The Bishop Estate later sought and obtained from the Internal Revenue Service approval to sell the leased-fee interest in its single family residential properties without being taxed and used as justification for its request the existence of HRS Chapter 516 and the intent of the HHA to use that law. (Exh. L-53) The letter containing the IRS approval stated in part:

> The limitation on your sales activity to your present lessees, the operation of the state law procedure encouraging and requiring the sale of leasehold estates and the absence of promotional and development activity indicate that your sales are not of stock and trade or the property held for sale to customers in the ordinary course of a trade or business.
>
> Therefore, we rule that the sales will not affect your exempt status. The sales are within the section 512(b)(5) modification and gains from the sales will not be unrelated business taxable income to your organization under sections 511 and 512 of the Code.

165. After the enactment of the Land Reform Act, the Bishop Estate sold 2,516 residential houselots in fee simple to individual buyers and of those, 2,166 were sold directly to the lessees as negotiated sales under the Land Reform Act. This supports the conclusion that the Land Reform Act has been an important, if not the sole, motivation in most of the Bishop Estate's sales of its fee simple residential houselots.

VII. Kamiloiki Development Tract

166. Kamiloiki is a single family leasehold residential subdivision located in Hawaii Kai, a suburban neighborhood, predominantly single-family, located in Eastern Honolulu in the "urban corridor" of Honolulu, and, therefore, was the type of area which the Legislature in 1967 contemplated would be afflicted with the problems associated with the concentration of landownership and the residential leasehold system.

167. Donna Ikeda, a Defendant Lessee, spent part of her childhood in Kamiloiki while it was still a rural area. At that time dirt roads lead to the various farms, there was no school closer than Kaimuki, and even the school bus stop was miles from the childrens' homes. When the area was developed, she was one of the first to purchase a home. She and the other lessees saw to and financed the planting of trees, grass, shrubs, the building of an elementary school; and the establishment of parks, all of which has enhanced the neighborhood.

168. Kamiloiki and a considerable portion of the residential land in Hawaii Kai is owned by the Bishop Estate and leased to the homeowners under long-term residential leases, and is part and parcel of the concentration of landownership referred to by the Legislature (Exh. T-81, T-83, T-103, T-104a)

169. The leases provided by the Bishop Estate in Kamiloiki are for terms of 55 years with the rent fixed for either the first 30 or 40 years. The original lease forms used were FHA 2372 H. The lease rent for this initial fixed period is usually $155 per year. The first leases in Kamiloiki were executed around 1970. (Exh. T-83, T-86) These leases were

of the type which the Legislature in 1967 contemplated would subject the lessees to the type of problems associated with the residential leasehold system.

VIII. The Condemnation in Kamiloiki

170. On October 17, 1980, January 23, 1981 and February 27, 1981, the HHA designated, pursuant to HRS § 516-83, the development tract known as "Kamiloiki", for condemnation. (Tr: Vol. I, p. 45-70.)

171. Under HRS Section 516-22, the HHA has the authority to designate and condemn an entire development tract where the following conditions are met: twenty-five or more lessees or the lessees of more than fifty percent of the residential lots within the development tract, whichever number is less, have applied for purchase pursuant to HRS § 516-33; proper notice of public hearings has been given; a public hearing has been held; and the HHA finds that the acquisition of the leased fee interest in the residential houselots in the development tract through the exercise of the power of eminent domain or purchase under threat of eminent domain will effectuate the public purposes of Chapter 516.

172. It is not necessary that the lessee of a particular residential houselot in the development tract apply to the HHA for purchase under Chapter 516 in order for the HHA to be able to designate that houselot within the development tract designated for condemnation. (Tr. Vol. II, p. 4-5)

173. Upon receiving the Request for Designation of Development Tract with thirty (30) signatures and thirty

(30) Applications to Purchase Leased Fee Interest Under H.R.S. Chapter 516, and the Request to Schedule A Public Hearing, dated November 9, 1978 (Exh. 8) and received by the Hawaii Housing Authority on November 15, 1978, from the Kamiloiki Valley Community Association attorney, the Land Reform Branch of the HHA reviewed the Request for Designation to determine whether the tract qualified.

174. After reviewing the Request and the documents submitted, the Land Reform Branch made a favorable preliminary determination upon the feasibility of designation (Exh. 37) and recommended adoption of Resolution No. 1717, The Resolution for Proposed Designation of Kamiloiki Valley Subdivision. (Exh. 38)

175. On January 18, 1979, the HHA commissioners adopted Resolution No. 1717, "Resolution for Proposed Designation of the Kamiloiki Valley Subdivision." (Exh. 39)

176. Resolution 1717 was published in the Honolulu Star-Bulletin three (3) times, on February 10, 12 and 13, 1979 (Exh. 40), and subsequently republished for correction of the dates of the notices of public hearing in the Honolulu Star-Bulletin two (2) times, on February 14 and 15, 1979. (Exh. 41)

177. At the public hearing held on February 22, 1979, 8:30 p.m. at Kaiser Kigh School Cafetorium, 511 Lunalilo Home Road, William A. Hall, Assistant Executive Director of the Hawaii Housing Authority, presided, calling the hearing to order, hearing all testimony, and asking for a show of hands of those persons for and against designation of the tract. (Exh. 42)

178. All persons present and voting at the public hearing voted unanimously in favor of the designation of the tract. (Exh. 42)

179. On March 30, 1979, the Land Reform Branch prepared a summary of the findings of the public hearing and a recommendation that Hawaii Housing Authority Commissioners adopt Resolution No. 1764, which provides for "The Finding of Effectuation of Public Purpose of Chapter 516, HRS, And A Request To The Lessor And Lessee To Negotiate The Owners' Basis." (Exh. 43)

180. On March 30, 1979, the Commissioners met and approved and adopted Resolution No. 1764, "The Finding of Effectuation of Public Purposes of Chapter 516, HRS, and Request for Negotiation". (Exh. 44)

181. On April 10, and 25, 1979, the HHA mailed a copy of Resolution No. 1764 to the Kamiloiki Valley Community Association's attorneys (Exh. 45 and 46) and the Trustees of the Bishop Estate (Exh. 47 and 48), and also requested the parties to begin negotiating the just compensation to be paid for the leased fee interest.

182. The sixty (60) day period for negotiations expired on June 25, 1979.

183. On June 2, 1980, at 6:30 p.m., the Commissioners of the Hawaii Housing Authority met in a recessed meeting in the office of Authority to discuss the Request to Set Commitment Amounts for Kamiloiki Valley. (Exh. 49)

184. At the June 2, 1980 Commission Meeting, the commitment amount for Kamiloiki Valley was set at 120 percent of the MAI appraisal, plus 1 percent per month over 6 months. (See page number 89 of Exh. 49)

185. On August 1, 1980, the Hawaii Housing Authority mailed to each applicant a request for the following materials: (1) a current financial statement, (2) evidence of financial ability to purchase at the commitment amount, and (3) a $500 deposit. (Exh. 51)

186. On August 4, 1980, title reports were ordered from Long and Melone by the Land Reform Branch for all lots of the applicants. (Exh. 51)

187. On August 18, 1980, the Land Reform Branch mailed Discrepancy List Number 1 to the Kamiloiki Valley Community Association wherein were the comments of the Land Reform Branch on the qualification of each lessee noted in Tax Map Key Number order. (Exh. 52) The Discrepancy List indicated which lessee did not, at that particular time, meet a particular requirement.

188. On September 5, 1980 (Exh. 57) and October 8, 1980 (Exh. 58), the Hawaii Housing Authority opened indivdual passbook savings accounts of $500 each at State Savings for the two hundred fifty-eight (258) applying lessees who had submitted this amount to the Land Reform Branch.

189. On September 9, 1980, the Land Reform Branch mailed Discrepancy List Number 2 to the Kamiloiki Valley Community Association. (Exh. 53)

190. On September 23, 1980, the Land Reform Branch mailed Discrepancy List Number 3 to the Kamiloiki Valley Community Association. (Exh. 54)

191. On September 29, 1980, the Land Reform Branch mailed Discrepancy List Number 4 to the Kamiloiki Valley Community Association. (Exh. 55)

192. On October 9, 1980, the Land Reform Branch mailed a list of the tax map keys of applicants who did not qualify for designation. (Exh. 56)

193. On October 17, 1980, the Land Reform Branch prepared "For Action Item No. 23" for consideration by the Commissioners along with Resolution No. 1933, the Designation Resolution for the two hundred fifty-four (254) leased residential lots in the Kamiloiki Valley Subdivision. (Exh. 57)

194. In "For Action Item No. 23" the Land Reform Branch reported to the commissioners the following:

1. In accordance with the Land Reform Act, two hundred fifty-four (254) lessees of the Kamiloiki Valley Subdivision situated at Hawaii-Kai, City and County of Honolulu, have applied for designation and purchase of the leased fee interest in their lots from Bishop Estate as the fee owner, lessor and legal or equitable owner in said lots. These lessees have complied with all the requirements of Rule 10.

2. At the public hearing held on February 22, 1979, all but one testimony presented were in favor of the proposed designation.

3. Although the sixty (60) day period for negotiation expired on June 25, 1979, the lessees' representative (Hoddick, Reinwald, O'Connor & Marrack) and the Trustees' representative (Ashford & Wriston) have not been able to reach agreement as to the owner's basis.

4. The Designation Resolution identifies the specific lots which the Authority wants to acquire. The Resolution also sets the date of compensation and starts the

time period for which HHA is liable for the lessor's expenses such as attorneys' fees if the Authority does not acquire or file condemnation within twelve (12) months from the date of said Resolution.

5. It is anticipated that the condemnation suit (which Judge King allowed in his preliminary ruling and memorandum decision) will be filed as soon as possible after adoption of the Resolution.

6. Based upon the financial statements, loan commitments and/or verifications of funds on file, the two hundred fifty-four (254) lessees have submitted satisfactory proof of ability to purchase the leased fee interest in their respective residential lots. Additionally, $500 was previously collected from said lessees.

7. The applicants listed on the attached exhibit have not qualified.

195. Also in "For Action Item No. 23" the Land Reform Branch recommended (1) adoption of Resolution No. 1933 pertaining to the Designation of qualified lots in Kamiloiki Valley Subdivision and the commencement by the Authority's attorney of legal proceedings to acquire the leased fee interest, (2) approval of the acquisition of the designated lots and the subsequent disposition thereof, and (3) authorization for the Executive Director or his designee to send written notification to the applicants who have not qualified to purchase.

196. There are two periods of time in which the HHA determines that a lessee meets the qualifications as set out in H.R.S. § 516-33: at the designation of the development tract and at transfer of title from the HHA to the lessee. (Tr. Vol. II, p. 35.)

197. The Commission approved Resolution No. 1933 on October 17, 1980 (Exh. 59) designating Kamiloiki for condemnation, which was published in the Honolulu Star-Bulletin on October 24, 1980. The Complaint herein was filed on November 10, 1980.

198. Although the evidence shows that in reviewing and processing the Defendant Lessees' applications to purchase the leased fee interest in their residential houselots and their requests for designation, the HHA sometimes may have been deficient in following its own procedures, in that it found eligible a few lessees who might not have been eligible, the HHA properly found that most of the lessee-applicants fell within the class intended by the legislature to benefit from the application of Chapter 516.

199. The HHA's action in designating the Kamiloiki development tract for condemnation was proper.

200. The HHA properly found that the acquisition of the leased fee interest in the residential houselots in Kamiloiki through the exercise of eminent domain or by purchase under the threat of eminent domain and the disposition thereof would effectuate the public purposes of Chapter 516 and was therefore a public use. (Tr. Vol. I, pp. 45-70, Exh. 43)

Conclusions of Law

A. The Presumption of Constitutionality of Legislative Enactment

1. Every enactment of the legislature is presumptively constitutional and the burden of showing that an act of the legislature is unconstitutional is on the party asserting

that the law is unconstitutional. *Bishop v. Mahiko*, 35 Haw. 608 (1940), *State of Hawaii v. Raitz*, 63 Haw. 64,621 P.2d 352 (1980).

2. Every enactment of the legislature carries a presumption of constitutional validity and should be sustained by a reviewing court unless the statute has been shown to be beyond all reasonable doubt in violation of the constitution. *Bishop v. Mahiko*, 35 Haw. 608 (1940); *State of Hawaii v. Raitz*, 63 Haw. 64,621 P.2d 352 (1980).

3. The party challenging the constitutionality of a statute must present and adduce facts to show the unconstitutionality of the statute by clear and convincing evidence and must show beyond all question that the legislature exceeded the limits established by the constitution. *Bishop v. Mahiko*, 35 Haw. 608 (1940).

B. The Determination and Declaration of "Public Use"

4. The right to declare what shall be deemed a "public use" is vested in the legislature and the question for determination is whether the legislature might reasonably have considered the use for which the eminent domain power is exercised was public, not whether the use is public in fact. *Hawaii Housing Authority v. Schnack*, 39 Haw. 543 (1952).

5. The determination of "public use" is primarily vested in the legislature and is predicated upon the presumption that a use of the property is public, if the legislature has declared such use to be a "public use." *Hawaii Housing Authority v. Schnack*, 39 Haw. 543 (1952).

6. Legislative findings and declarations of "public use" are entitled to great weight and a legislative finding and

declaration that the particular uses described in the statute are a "public use" are entitled not only to respect, but are prima facie correct and valid. *Hawaii Housing Authority v. Schnack*, 39 Haw. 543 (1952).

7. The issue of public use is a judicial question and one of law to be decided on the facts. Where the legislature declares a particular use for the condemned property to be a "public use," the presumption is in favor the legislative declaration and will be binding upon a reviewing court, unless such use is clearly and palpably of a private character. *Hawaii Housing Authority v. Schnack*, 39 Haw. 543 (1952).

8. Great weight is accorded the legislative finding of "public use" in a statutory exercise of eminent domain and the prima facie acceptance of its correctness will not be lightly disturbed and a court will not overrule a legislative determination of "public use" unless it is manifestly wrong. *Hawaii Housing Authority v. Schnack*, 39 Haw. 543 (1952).

9. The state legislature declared that Act 307, 1967 Session Laws ("Act 307"), Act 184, 1975 Session Laws ("Act 184") and Act 186, 1975 Session Laws ("Act 186") were enacted and would accomplish a "public use" insofar as they would address and attempt to rectify the problems of the concentration of land ownership; the shortage of single-family residential fee simple property; the restriction on the people of a real choice between fee simple and leasehold residential property, which has in turn caused land prices for both fee simple and leasehold residential lots to become artificially inflated, and has enabled lessors

to include in residential leases terms and conditions which are financially disadvantageous to the lessees and which unduly restrict their freedom to enjoy their leasehold estates; the predominance of the policy of leasehold development over fee simple; rent renegotiations; the effect the leasehold system on the public welfare and on the economy of the State; and would eventually result in the elimination of the leasehold system in Hawaii.

10. Act 307, Act 184, and Act 186 declared that a "public use" would be achieved and realized through the exercise of the eminent domain power resulting in the dispersion of fee simple residential lots to as large a number of people as possible; the availability of fee simple residential lots at a fair and reasonable price; and the opportunity for lessees of residential leases to derive full enjoyment from their leaseholds. All of these are factors which vitally affect the economy of the State and the public interest, health, welfare, security and happiness.

11. The legislative exercise of the eminent domain power to improve the general economic conditions of the state, even though identifiable individual private parties may be specially benefitted, is a "public use" of the property taken. *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455 (Mich. 1981), *Mayor and City Council of Baltimore v. Chertkoff*, 441 A.2d 1044 (Md. 1982).

12. The state legislative declaration in Act 307, 1967 Hawaii Session Laws, that the statute was enacted to and would accomplish a "public use" through the dispersal of the ownership of fee simple lands and the promotion of the general prosperity of the state is a legislative finding

and declaration of "public use" and is prima facie correct and binding upon a reviewing court, unless such legislatively-declared use is clearly and palpably of a private character without any public benefits.

13. The constitutional requirement of "public use" is established by the presumption in favor of constitutionality, and the failure of the Bishop Estate to overcome that presumption of constitutionality affirms the legislature's findings and declarations that Chapter 516, Hawaii Revised Statutes ("Chapter 516") achieves and is for a "public use."

14. The legislative finding and declaration of "public use" incorporated in Chapter 516, Act 307, 1967 and Act 184, 1975 are supported by the evidence and are valid.

C. The Designation of the Kamiloiki Tract Pursuant to Chapter 516

15. The exercise of the condemnation power for the Kamiloiki Tract is an exercise of the condemnation power contemplated by Chapter 516.

16. The selection and designation of any particular tract of leasehold land, including the Kamiloiki Tract, for condemnation is delegated to the Hawaii Housing Authority, provided that the Hawaii Housing Authority finds that the designation would "effectuate the public purposes" of Chapter 516.

17. Hawaii Housing Authority so found that the designation of the Kamiloiki Tract would "effecutate the public purposes" of Chapter 516 and that finding has been established to be proper and valid, notwithstanding some possible procedural deficiencies on the part of the HHA.

D. Evidence

18. The Court concludes from the legislative findings and declarations and the evidence presented in this case that Chapter 516, Hawaii Revised Statutes, was enacted for a "public use and purpose" and that the condemnation provided therein are for a "public use and purpose" and those legislative findings are supported by a presumption of constitutionality which must be negated by clear and convincing evidence beyond all reasonable doubt.

. The Trustees of the Bishop Estate, have failed to adduce by a preponderance of the evidence, no less than by clear and convincing evidence or beyond a reasonable doubt, that Chapter 516, was unconstitutional under the United States Constitution and the constitution of the State of Hawaii.

21. The Trustees of the Bishop Estate have failed to establish by a preponderance of the evidence, no less than by clear and convincing evidence or beyond a reasonable doubt, that the legislative findings and declaration of "public use" set forth in Act 307, Act 184, and Act 186, is erroneous and without any support or is of a private character without any public benefits.

22. The Trustees of the Bishop Estate have failed to prove that Chapter 516, is arbitrary, capricious and not reasonably related to a proper legislative purpose.

23. Even when examining Chapter 516 and its justifications under a standard of "heightened scrutiny," Chapter 516 is constitutional when measured against the specific constitutional limitations of due process, equal protection and the "public use" requirement.

24. Chapter 516 does not take property without just compensation in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

25. Chapter 516 is a legitimate exercise of the sovereign police power and is constitutional.

26. This Court shall enter a judgment that Act 307, Hawaii Session Laws of 1967, codified as Chapter 516, Hawaii Revised Statutes as now amended is constitutional under both the Hawaii State and United States Constitutions.

Dated: Honolulu, Hawaii, September 2, 1983.

[Seal]

Ronald B. Greig
Judge of the above-entitled court

APPENDIX "A"

Documents Before the Legislature

The following documents, studies and reports were available to and/or before the legislature in 1967 and 1975, or contain supporting evidence for the following legislative findings of Act 186:

Section 1(a)(1):

AN INVENTORY OF AVAILABLE INFORMATION ON LAND USE IN HAWAII (Volume 1: Evaluation and Recommendations) (01/57) Prepared for the Economic Planning and Coordination Authority, Territory of Hawaii, Harland Bartholomew and Associates (Exhibit 155)

AN INVENTORY OF AVAILABLE INFORMATION ON LAND USE IN HAWAII (Volume 2: Annotated Bibliography and Summary of Interviews) (1957) Prepared for the Economic Planning & Coordination Authority by Harland Vartholomew and Associates (Exhibit 158)

A STUDY OF LARGE LAND OWNERS IN HAWAII (1957) Clinton T. Tanimura and Robert M. Kamins, Report No. 2, 1957, Legislative Reference Bureau, University of Hawaii. (Exhibit 156)

MAJOR LANDHOLDINGS IN HAWAII, OWNERSHIP PATTERNS AND LEASING POLICIES (02/57) Economic Planning and Coordination Authority (EPCA) Staff Report No. 14. (Exhibit 157)

MAJOR LANDHOLDINGS IN HAWAII DATA ON LAND OWNERSHIP AND LAND USE (1961) Legisla-

tive Reference Bureau, University of Hawaii, Honolulu, Hawaii, Request No. 7969. (Exhibit 164)

AN ECONOMIC VIEW OF LEASEHOLD AND FEE SIMPLE TENURE OF RESIDENTIAL LAND IN HAWAII (1964) Louis A. Vargha, Land Study Bureau, University of Hawaii, L.S.B. Bulletin No. 4. (Exhibit 169a)

PUBLIC LAND POLICY IN HAWAII: MAJOR LANDOWNERS (1967) Robert H. Horwitz, Judith B. Finn, Assisted by Marie Gillespie, Karen T. Uemoto, University of Hawaii, Report No. 3, 1967, Reprinted 1969, Legislative Reference Bureau, University of Hawaii. (Exhibit 176)

HOUSING COSTS IN HAWAII—Report to the Legislature of the State of Hawaii (1969) Submitted by the Interim Committee on Housing, Prepared by the Office of the Lieutenant Governor. (Exhibit 177)

THE STATE OF HAWAII DATA BOOK (1975)

Department of Planning & Economic Development, prepared in the Research and Economic Analysis Division, headed by Dr. Richard Y. P. Joun, Robert C. Schmitt, State Statistician, with the assistance of Lynn Y. S. Zane, Research Statistician (Exhibit 202)

HAWAII LAND STUDY—STUDY OF LAND TENURE, LAND COST, AND FUTURE LAND USE IN HAWAII (04/25/69)

E.R.A. Economics Research Associates, Los Angeles, Washington, D.C. (Exhibit 178)

RESIDENTIAL LEASEHOLD SUBDIVISIONS ISLAND OF OAHU (1963)

Louis A. Vargha, University of Hawaii, Land Study Bureau, Special Study Series, ISB Report No. 7 (Exhibit 168a)

Section 1(a)(2)

AN INVENTORY OF AVAILABLE INFORMATION ON LAND USE IN HAWAII (Volume 1: Evaluation and Recommendations) (01/57)

Prepared for the Economic Planning and Coordination Authority, Territory of Hawaii, Harland Bartholomew and Associates (Exhibit 155)

LAND AND HOUSING ON OAHU (04-1959)

Prepared by Land Study Committee of the Honolulu Chamber of Commerce. (Exhibit 160)

URBAN DEVELOPMENT ON OAHU, 1946-1962 (1964)

Louis A. Vargha, Assoc. Researcher, Urban Economics, University of Hawaii (Exhibit 165)

RESIDENTIAL LEASEHOLD SUBDIVISIONS ISLAND OF OAHU (1963)

Louis A. Vargha, University of Hawaii, Land Study Bureau, Special Study Series, ISB Report No. 7 (Exhibit 168a)

AN ECONOMIC VIEW OF LEASEHOLD AND FEE SIMPLE TENURE OF RESIDENTIAL LAND IN HAWAII (1964)

Louis A. Vargha, Land Study Bureau, University of Hawaii, L.S.B. Bulletin No. 4 (Exhibit 169a)

HOUSING COSTS IN HAWAII—Report to the Legislature of the State of Hawaii (1969)

Submitted by the Interim Committee on Housing, Prepared by the Office of the Lieutenant Governor (Exhibit 177)

GOVERNOR'S STATEWIDE CONFERENCE ON HOUSING: Selected Papers From The Oahu Session (1970)

Office of the Governor, Department of Planning and Economic Development, State of Hawaii (Exhibit 183)

HOUSING IN HAWAII: PROBLEMS, NEEDS AND PLANS (1970)

Prepared for the State of Hawaii, Dept. of Planning and Economic Development by Marshall Kaplan, Gans, Kahn and Yamamoto (Exhibit 185)

STATE OF HAWAII LAND USE DISTRICTS & REGULATIONS REVIEW, WORKING PAPER #1 (1969)

Eckbo, Dean, Austin & Williams, January 8, 1969 (Exhibit 182)

HOUSING FOR HAWAII'S PEOPLE—Summary Report (1977)

Prepared for the State of Hawaii, Hawaii Housing Authority, Dept. of Planning and Economic Development, by Daly and Associates (Exhibit 207)

LAND USE DISTRICTS FOR THE STATE OF HAWAII, Recommendations for Implementation of the State Land Use Law, Act 187, SLH 1961 (1961)

Prepared for the Dept. of Planning and Research and the Land Use Commission by Harland Bartholomew & Associates (Exhibit 167)

CENTRAL OAHU PLANNING STUDY Technical Supplement 3: A Survey of Vacant Residential Lands Wtihin the Honolulu Commutershed, (January 1973)

John C. Holstrom, Principal Investigator, Central Oahu Planning Study, Vacant Land Study Component, Published by the Dept. of Planning & Economic Development. (Exhibit 191)

CENTRAL OAHU PLANNING STUDY—A PROGRESS REPORT (1972)

Prepared for Presentation to the Sixth Legislature, State of Hawaii, Regular Session of 1972, Department of Planning and Economic Development, February 1972

Section 1(a)(3)

MAJOR LANDHOLDINGS IN HAWAII, OWNERSHIP PATTERNS AND LEASING POLICIES (02/57)

Economic Planning and Coordination Authority (EPCA) Staff Report No. 14 (Exhibit 157)

LAND AND HOUSING ON OAHU (04/1959)

Prepared by Land Study Committee (Exhibit 160)

MAJOR LANDHOLDINGS IN HAWAII
DATA ON LAND OWNERSHIP AND LAND USE (1961)

Legislative Reference Bureau, University of Hawaii, Honolulu, Hawaii, Request No. 7969. (Exhibit 164)

RESIDENTIAL LEASEHOLD SUBDIVISIONS ISLAND OF OAHU (1963)

Louis A. Vargha, University of Hawaii, Land Study Bureau, Special Study Series, LSB Report No. 7 (Exhibit 168a)

AN ECONOMIC VIEW OF LEASEHOLD AND FEE SIMPLE TENURE OF RESIDENTIAL LAND IN HAWAII (1964)

Louis A. Vargha, Land Study Bureau, University of Hawaii, L.S.B. Bulletin No. 4 (Exhibit 169a)

HOUSING COSTS IN HAWAII—Report to the Legislature of the State of Hawaii (1969)

Submitted by the Interim Committee on Housing, Prepared by the Office of the Lieutenant Governor (Exhibit 177)

AN ECONOMIC ANALYSIS OF BISHOP ESTATE RESIDENTIAL LEASING POLICY

Prepared for the Bernice P. Bishop Estate by Economics Research Associates—September, 1969

Section 1(a)(4)

HOUSING COSTS IN HAWAII—Report to the Legislature of the State of Hawaii (1969)

Submitted by the Interim Committee on Housing, Prepared by the Office of the Lieutenant Governor (Exhibit 177)

HAWAII'S CRISIS IN HOUSING (1970)
Report to the People of Hawaii
Office of Lieutenant Governor (Exhibit 239)

HOUSING IN HAWAII: PROBLEMS, NEEDS AND PLANS (12-1970)
Prepared for the State of Hawaii, Dept. of Planning and Economic Development by Marshall Kaplan, Gans, Kahn and Yamamoto (Exhibit 185)

HOUSING FOR HAWAII'S PEOPLE, TECHNICAL APPENDIX (1977)
Prepared for the State of Hawaii Hawaii Housing Authority, Dept. of Planning and Economic Development, by Dalyand Associates (Exhibit 206)

HOUSING FOR HAWAII'S PEOPLE—Summary Report (1977)
Prepared for the State of Hawaii Hawaii Housing Authority, Dept. of Planning and Economic Development, by Daly and Associates (Exhibit 207)

HOUSING FOR HAWAII'S PEOPLE (1977)
Prepared for the State of Hawaii, Hawaii Housing Authority, Dept. of Planning and Economic Development, Prepared by: Daly and Associates (Exhibit 205)

LAND AND HOUSING ON OAHU (04-1959)
Prepared by Land Study Committee of The Honolulu Chamber of Commerce (Exhibit 160)

GOVERNOR'S STATEWIDE CONFERENCE ON HOUSING: Selected Papers From The Oahu Session (1970) Office of the Governor, Department of Planning and Economic Development, State of Hawaii (Exhibit 183)

THE HOUSING NEED GROUP ON OAHU HOUSING FOLLOW-UP STUDY #1 (1978)

Prepared for the State of Hawai, Dept. of Planning and Economic Development Hawaii Housing Authority, Dept. of Social Services and Housing, by Daly and Associates (Exhibit 208)

GEOGRAPHIC AREA REVIEW FOR HOUSING: THE WAIANAE DISTRICT HOUSING FOLLOW UP STUDY #4 (1978) Prepared for the State of Hawaii, Dept. of Planning and Economic Development, Hawaii Housing Authority, Dept. of Social Services and Housing, by Daly and Associates (Exhibit 209)

COMPARATIVE ANALYSIS OF OWNERS OF MODERATELY PRICED (HHA AND NON HAA) HOMES IN TERMS OF CHARACTERISTICS AND HOUSING PREFERENCES HOUSING PREFERENCES HOUSING FOLLOW-UP STUDY #2 (1978)

Prepared for the State of Hawaii, by Daly & Assoc. (Exhibit 211)

HAWAII HOUSING AUTHORITY ANNUAL REPORT—July 1, 1977 to June 30, 1978 Rx for Housing: Challenge for the 80's (Exhibit 213)

PEOPLE HELPING PEOPLE THROUGH 20 YEARS OF STATEHOOD, Hawaii Housing Authority Annual in Report July 1, 1978—June 30, 1979 (Exhibit 214)

HAWAII HOUSING AUTHORITY ANNUAL REPORT, July 1, 1979—June 30, 1980 (Exhibit 215)

HAWAII HOUSING AUTHORITY ANNUAL REPORT, July 1, 1980—June 30, 1981 (Exhibit 216)

Section 1(a)(5)

HAWAII HOUSING AUTHORTIY ANNUAL REPORT, July 1, 1977 to June 30, 1978 RX for Housing: Challenge for the 80's (Exhibit 213)

PEOPLE HELPING PEOPLE THROUGH 20 YEARS OF STATEHOOD, Hawaii Housing Authority Annual in Report July 1, 1978—June 30, 1979 (Exhibit 214)

HAWAII HOUSING AUTHORTIY ANNUAL REPORT, July 1, 1979—June 30, 1980 (Exhibit 215)

HAWAII HOUSING AUTHORITY ANNUAL REPORT, July 1, 1980—June 30, 1981 (Exhibit 216)

AFFORDABLE HOUSING ISSUE PAPER (1981)
Department of Planning and Economic Development, Prepared by Daly & Associates, Inc. (Exhibit 218)

HOUSING FOR HAWAII'S PEOPLE (1977)
Prepared for State of Hawaii, Hawaii Housing Authority, Dept. of Planning and Economic Development, Prepared by Daly and Associates (Exhibit 205)

HOUSING FOR HAWAII'S PEOPLE, TECHNICAL APPENDIX (1977)
Prepared for State of Hawaii Hawaii Housing Authority, Dept. of Planning and Economic Development, by Daly and Associates (Exhibit 206)

HOUSING FOR HAWAII'S PEOPLE—Summary Report (1977)
Prepared for the State of Hawaii Hawaii Housing Authority, Dept. of Planning and Economic Development, by Daly and Associates (Exhibit 207)

GOVERNOR'S STATEWIDE CONFERENCE ON HOUSING—Selected Papers From The Oahu Session (1970)

Office of the Governor, Department of Planning and Economic Development, State of Hawaii (Exhibit 183)

HOUSING COSTS IN HAWAII—Report to the Legislature of the State of Hawaii (1969)

Submitted by the Interim Committee on Housing, Prepared by the Office of the Lieutenant Governor (Exhibit 177)

Section 1(a)(6)

HOUSING FOR HAWAII'S PEOPLE (1977)

Prepared for State of Hawaii, Hawaii Housing Authority, Dept. of Planning and Economic Development, Prepared by: Daly and Associates (Exhibit 205)

HOUSING FOR HAWAII'S PEOPLE, TECHNICAL APPENDIX (1977)

Prepared for State of Hawaii Hawaii Housing Authority, Dept. of Planning and Economic Development, by Daly and Associates (Exhibit 206)

HOUSING FOR HAWAII'S PEOPLE—Summary Report (1977)

Prepared for the State of Hawaii Hawaii Housing Authority, Dept. of Planning and Economic Development, by Daly and Associates (Exhibit 207)

GOVERNOR'S STATEWIDE CONFERENCE ON HOUSING: (1970) Selected Papers From The Oahu Session Office of the Governor, Department of Planning and Economic Development, State of Hawaii (Exhibit 183)

HOUSING COSTS IN HAWAII—Report to the Legislature of the State of Hawaii (1969)

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THE HOUSING NEED GROUP ON OAHU HOUSING FOLLOW-UP STUDY #1 (1978)

Prepared for State of Hawaii, Dept. of Planning and Economic Development Hawaii Housing Authority, Dept. of Social Services and Housing, by Daly & Associates (Exhibit 208)

GEOGRAPHIC AREA REVIEW FOR HOUSING: THE WAIANAE DISTRICT HOUSING FOLLOW UP #4 (1978)

Prepared for State of Hawaii, Dept. of Planning and Economic Development, Hawaii Housing Authority, Dept. of Social Services and Housing, by Daly and Associates (Exhibit 209)

COMPARATIVE ANALYSIS OF OWNERS OF MODERATELY PRICES (HHA and NON HHA) HOMES IN TERM OF CHARACTERISTICS AND HOUSING PREFERENCES HOUSING PREFERENCES HOUSING FOLLOW-UP STUDY #2 (1978)

Prepared for State of Hawaii, by Daly & Assoc. (Exhibit 211)

HOUSING IN HAWAII: PROBLEMS, NEEDS AND PLANS (12-1970)

Prepared for the State of Hawaii, Dept. of Planning and Economic Development by Marshall Kaplan, Gans, Kahn and Yamamoto (Exhibit 185)

Section 1(a)(7)

HOUSING IN HAWAII: PROBLEMS, NEEDS AND PLANS/(12-1970)

Prepared for the State of Hawaii, Dept. of Planning and Economic Development by Marshall Kaplan, Gans, Kahn and Yamamoto (Exhibit 185)

Excerpts of testimonies before various legislature bodies 1959-1975 in evidence as:

Exhibit 72 Kaloaloa Neighborhood Association Statement of S.B. No. 7 (1959)
—need land for residence lots i.e. moves houses onto
—need land for new houses
Endorse S.B. No. 7, answer to problems of people unable to buy.
Forced off land by airport and industrial use.

Exhibit 91 John Hulten Testimony

Exhibit 93 April 10, 1959
Testimony of John Hulten
April 7, 1959
Testimony of Katsuo Miho, Chamber of Commerce
—recognized the need for making land available to as many people who can qualify to do so

Exhibit 147 April 9, 1975
Letter from Mr. and Mrs. Stanley Keagle
—desperate straits, as lease rent has been increased by 2000% to 3000%

—cannot afford to stay

—life savings will be wiped out

Exhibit 97 Committee Minutes: 2/7/61

Testimony of Frank Hustace, Former Land Commissioner

Those who might become public charges, i.e., wind up in public housing. Encourage those in public housing to move out by making it easier for them to buy housing.

Exhibit 99 Rev. Delwyn Rayson, 4/20/61

Testimony

Enclosure A (not attached)

Dr. Thomas Hitch:

"Land prices in Hawaii for residential lots are higher today than they would've been if it were not for the historical heritage of large estates and leaseholds."

Exhibit 110 D. Richard Neill, State Committee of Christian Social Action, 4/3/63:

"A major problem for Hawaii and its future economic development and well-being is land shortage and land monopoly . . . .

Consequences are: Exorbitant land and building costs and exclusion of many people from home ownership."

"(Land monopoly) still does to a certain extent exist in Hawaii, and . . . generally speaking, any monopolistic system tends to be bad for the health of a democratic society."

"An important base of our "American way of life' is individual home ownership which usually implies the land upon which the home is located, except in Hawaii."

"There is a virtual monopoly of land here in Hawaii and this bill would help alleviate it . . . This bill is both moral and democratic."

Exhibit 110 Harry Boranian, Central Labor Council, AFL-CIO, 1963

Support the legislation because it is important to American society that home ownership be encouraged, basic foundation of a healthy and responsible community. Estates have previously been able to control price and availability of land by leasing it.

Exhibit 111 Testimony by Clarence A. Wyatt, Jr. 1963

—artificially restricted market in Oahu homesites

—people generally want to own the land on which they build their houses

—artificial restriction pushes price up

—high cost of living, housing a big contributor to that

—large scale leasing causes economic problems

—wide disperson of land ownership is fundamental American concept, and the concept of land ownership is reasonable

Exhibit 115 Lewis Freitas, March 20, 1967

—unreasonable rental increases

—concentration of land ownership

—unequal bargaining power and knowledge

—lessees need help

Clarence Wyatt

—fee simple ownership should be encouraged

—only way to do this is to provide by law that lessee may purchase fee

—give homeowner the choice

Aina Koa Community Association

—"squeeze" of economic coercion inherent in the practical land monopoly existing in the State

—ever-increasing inflationary pressure gravely threatens the economic well-being of these Islands

—this pressure due in substantial part to the virtual monopoly over available residential land

Exhibit 116 Testimony of Gunter R. Seckel 4/22/66 (67?)

—land in Hawaii is essentially under monopoly control

—large landowners have bled the public for too long and are the primary cause of Hawaii's high cost of living

Exhibit 120 June 13, 1967

Letter from Lewis Freitas to Governor urging passage of Land Reform Bill

—lessees have inadequate bargaining power and no effective legal protection currently

May 23, 1967

G.R. Conradt

—49 other states have fee simple land owned by homeowners who can buy that land. Why not Hawaii?

—encourage fee ownership

Exhibit 138 Kalihi-Palama Neighborhood Council

February 10, 1975

—in favor of legislation allowing lessee to purchase fee interest

—those who make land productive should have the right to own it

—present land system is monopolistic and illegal

—land monopoly, i.e., lack of fee simple land has enormous effect on cost of living

—should allow both commercial and residential lessees to purchase land

—eventually, without Maryland land law, we'll all become economic serfs to a few large landowners

—monopolise and restraints of trade are dangerous

—land a vital commodity

—land is the key to affordable housing, not the cost of houses themselves

Exhibit 142 May 15, 1975

Letter by Ralph Hubbard (Alii Shores) urging Governor to sign S.B. No. 1200

—essential relief to many homeowners in Hawaii now at mercy of large landowners

—many homeowners wish to feel true ownership of their homes and the land on which they stand, without fear of future loss

May 19, 1975

Letter by Crown Terrace Community Association

—S.B. No. 1200 will help thousands of Hawaii residents to acquire ownership and provide some assurance that they will be able to keep their homes in the future

Exhibit 143 March 27, 1975

Testimony of George Connick

prepared in the Research and Economic Analysis Division, headed by Dr. Richard Y.P. Joun, Robert C. Schmitt, State Statistician, with the assistance of Lynn Y.S. Zane, Research Statistician (Exhibit 202)